

Presented to the Board of Commissioners  
AND APPROVED

SEP - 4 1979

*Mildred V. Highmore*  
CITY RECORDER

KIMBALL CONDOMINIUMS

AMENDED DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS

3335081

36 So State Suite 1200  
S.C. 84111

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REC'D OF  
REC'D  
OFFICE OF  
KIMBALL B. CLAY  
CITY RECORDER

SEP 11 12 31 PM '79

KATIE L. HAYMON  
RECORDER  
SALT LAKE COUNTY  
UTAH

THIS AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, hereinafter called "Declaration" and the By-Laws, which are attached hereto as Appendix "B" and made a part hereof, are made and executed in Salt Lake County, Utah, this 1<sup>st</sup> day of August, 1979, by the undersigned, who constitute 100 percent of the current owners of the Kimball Condominiums, for themselves and their successors, grantees and assigns, pursuant to the provisions of the Utah Condominium Ownership Act, Utah Code Annotated, Section 57-8-1, et seq., 1953 (as amended), hereinafter referred to as "Condominium Ownership Act" and Paragraph 21 of the original Declarations which were dated September 22, 1978, and recorded in the office of the Salt Lake County Recorder on October 19, 1978, as Entry No. 3185154, in Book 4758, at Pages 303 through 328.

WITNESSETH:

WHEREAS, since the recording of the original Declarations it has become apparent to the owners that an Amended Declaration is necessary to meet with needs of the condominiums and for various other considerations; and

WHEREAS, by the execution and recording of this Amended Declaration and Maps, the original Declaration and Maps shall be superseded and of no continuing effect and these Amended Declaration and Maps shall become effective; and

WHEREAS, Declarant is the owner of certain land located in Salt Lake County, Utah, hereinafter referred to as the "land" and more particularly described in Appendix "A" of this Declaration which is attached hereto and made a part

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hereof; and

WHEREAS, one multi-story residential building consisting of a total of ~~160~~ residential condominium units and other improvements upon the aforesaid premises have been constructed, renovated or modified in accordance with the plans and drawings set forth in the Amended Record of Survey Map attached hereto and filed concurrently herewith, consisting of 5 sheets prepared and certified by ROLAND PALMER, BINGHAM ENGINEERING, a duly registered Utah Land Surveyor, which supersede the prior recorded Map; and

WHEREAS, Declarant desires, by filing this Declaration and the aforesaid Record of Survey Map, to submit the above-described real property and the said building and other improvements constructed thereon to the provisions of the Utah Condominium Ownership Act as a condominium project known as KIMBALL CONDOMINIUMS; and

WHEREAS, Declarant desires and intends to sell the fee title to the individual units contained in said condominium project, together with an undivided ownership interest in the common areas and facilities appurtenant thereto, to various purchasers, subject to the covenants, conditions and restrictions herein reserved to be kept and observed; and

WHEREAS, Declarant desires and intends, by filing this Declaration and the Record of Survey Map, to submit the property to the provisions of the aforesaid act as a condominium property and to impose upon said property mutually beneficial restrictions for the benefit of said property and the owners thereof; and

WHEREAS, the Declarant intends to develop the above condominium project consisting of 158 residential units and to subject the entire property and units as so developed as one condominium project by the filing of a Declaration to

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accomplish that purpose.

NOW, THEREFORE, for such purposes, Declarant hereby makes the following Declaration containing covenants, conditions and restrictions relating to this condominium project which, pursuant to the provisions of Utah Code Annotated, Section 57-8-10, 1953 (as amended), shall be enforceable equitable servitudes where reasonable and shall run with the land.

1. NAME OF CONDOMINIUM PROPERTY. The name by which the condominium property shall be known is "KIMBALL CONDOMINIUMS."

2. DEFINITIONS. The terms used herein shall have the meaning stated in the Utah Condominium Ownership Act and shall apply to this Declaration and the By-Laws as follows:

A. "Declarant" shall mean Myron B. Childs, Jr.

B. The term "Act" shall mean and refer to the Utah Condominium Ownership Act, Utah Code Annotated, Section 57-8-1, et seq., 1953 (as amended).

C. The term "condominium" shall mean and refer to the ownership of a single unit in this condominium project, together with an undivided interest in the common areas and facilities of the property.

D. The term "Declaration" shall mean and refer to this instrument by which the KIMBALL CONDOMINIUMS project is established, as amended.

E. The term "property" shall mean and include the land, the buildings, all improvements and structures thereon, all easements, rights and appurtenances belonging thereto and all articles of personal property for use in connection therewith.

F. The term "condominium project" or "project" shall mean and refer to the entire real estate

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condominium project referred to in this Declaration.

G. The term "Map" shall mean and refer to the Record of Survey Map of the Kimball Condominiums, recorded herewith by Declarant in accordance with Utah Code Annotated, Section 57-8-13, 1953 (as amended), and attached hereto.

H. The term "unit" shall mean one of the residential units designated on the Record of Survey Map attached hereto. Horizontally each unit consists of the area measured horizontally from the unit side of the exterior walls of the building to the unit side of the walls and partitions separating such unit from other units, and where plaster or sheetrock partitions separate such unit from other units, to the centerline of the plaster or sheetrock on the other side of such plaster or sheetrock partitions facing such unit. Vertically each unit consists of the space between the top of the floor to the underside of the ceiling. A unit shall not include pipes, wires, conduits or other utility lines running through it which are utilized for or which serve more than one unit.

I. The term "unit owner" shall mean and refer to the person or persons owning a unit in fee simple and an undivided interest in the fee simple estate of the common areas and facilities in the percentage specified and established in this Declaration, which shall include the original purchasers and any other person who may subsequently acquire a unit.

J. The term "association of unit owners" shall mean and refer to all of the unit owners acting as a group in accordance with the Act, the Declaration and the By-Laws.

K. The term "unit number" shall mean and refer to the number designating the unit in the Declaration and in the Record of Survey Map.

L. The terms "majority" or "majority of unit owners" shall mean the owners of more than fifty (50%) percent of an undivided interest in the common areas and facilities.

M. The term "Management Committee" shall mean and refer to a committee composed of persons duly elected thereto by the association of unit owners, as provided by this Declaration or the Act in accordance with the By-Laws attached hereto as Appendix "B". Said committee is charged with and shall have the responsibility and authority to make and enforce all of the reasonable rules and regulations pertaining to the operation and maintenance of the property.

N. The term "Manager" shall mean and refer to one person, persons, corporation or other entity selected by the Management Committee to manage the affairs of the condominium project.

O. The term "common areas" refers to and consists of the entire condominium project, including all parts of the building other than the units and including, with limitation, the following:

- (1) The land on which the building is erected;
- (2) All foundations, columns, girders, beams and supports;
- (3) All exterior walls of the buildings not including the portions thereof on the unit side of such walls;
- (4) Roofs and entrances to the exits from

the building;

(5) Yards, gardens, recreational or common facilities, vaults and other areas used on connection therewith, parking and driveway areas and storage spaces;

(6) All central and appurtenant installations for services, such as power, light, telephone, gas, hot and cold water, fire sprinkling system, heat, refrigeration and air conditioning (including all pipes, ducts, wires, cables and conduits used in connection therewith, whether located in common areas or in units) and all other mechanical equipment spaces;

(7) All sewer pipes; and

(8) All other parts of the condominium.

P. The term "common expense" shall mean and refer to all expenses of administration, maintenance, repair or replacement of the common areas and facilities, to all items, things and sums described in the Act which are lawfully assessed against the unit owners in accordance with the provisions of the Act, this Declaration, the By-Laws, such rules and regulations pertaining to the condominium project as the association unit owners or the Management Committee may from time to time adopt, and such determinations and agreements lawfully made or entered into by the Management Committee.

Q. The term "reconstruction of the building(s)" shall mean restoring the building to substantially the same condition in which it existed prior to the fire or other disaster, with

each unit and the common elements having the same vertical and horizontal boundaries as before.

R. Those definitions contained in the Act, to the extent they are applicable to and not inconsistent herewith, shall be and are hereby incorporated herein by reference and shall have the same effect as if expressly set forth herein and made a part hereof.

3. DESCRIPTION OF PROPERTY.

A. Description of Land:

The tract of land located in Salt Lake County, Utah, as is more fully described in Appendix "A".

The building consists of one multi-story residential building with a total of 158 residential units.

The residential building is constructed on concrete foundations. Exterior walls are of brick; interior walls are of wooden studs and dry-wall plaster. The floors are concrete or wood.

The parking spaces are of asphalt.

All other details involving the respective description and location of the building and a statement of the number of units and the like details are set forth in the Record of Survey Map, which is filed with this Declaration and made a part hereof.

B. Description of Units:

(1) Annexed hereto and made a part hereof is a Record of Survey Map certified by \_\_\_\_\_ and filed with the Salt Lake County Recorder's office simultaneously with the

recording of this document, which map depicts each unit location, each unit's approximate area, the number of rooms and the common areas to which each unit has immediate access.

(2) Each residential unit shall consist of:

(a) The space enclosed within the undecorated interior surface of its perimeter walls, floors, and ceilings (being in appropriate cases the inner surfaces parallel to the roof plane and the projections thereof) projected, where appropriate, to form a complete enclosure of space, including any pipes, ducts, wires, conduits or structural divisions, such as interior walls or partitions which may intervene.

(b) Any finishing material applied or affixed to the interior surfaces of the perimeter walls, floors and ceilings, including, without limitation, paint, lacquer, varnish, wallpaper, tile, carpeting and paneling.

(c) Non-supporting interior walls.

(d) Windows and doors in the perimeter walls, whether located within the bounds of a unit or not, but not including any space occupied thereby to the extent located outside the bounds of the units.

Each unit has immediate access to the common areas and facilities. Any contract for the sale of a unit and any other instrument affecting title to a unit may describe that unit by its identifying number or symbol as designated in the map or maps with the appropriate reference to the map(s)



and to this Declaration, as each unit shall appear on the record of the County Recorder of Salt Lake County, Utah, in substantially the following fashion:

Unit \_\_\_\_\_, as shown on the Record of Survey Map for Kimball Condominiums, appearing in the records of the County Recorder of Salt Lake County, State of Utah, in Book \_\_\_\_\_ at Page \_\_\_\_\_, of Plats, and as defined and described in the Declaration of Condominium appearing in such records, in Book \_\_\_\_\_, Page \_\_\_\_\_, of Records, together with \_\_\_\_\_ percent of the undivided interest in the common area and facilities of the Kimball Condominiums.

Such description will be construed to describe the unit, together with the appurtenant undivided interest in the common areas and facilities and to incorporate all of the rights incident to ownership of a unit and all appurtenant undivided interest and all rights and limitations arising as a result of any amendment to the project.

C. Description of Common Area and Facilities:

Except as otherwise provided in this Declaration, the common areas and facilities shall consist of all parts of the condominium property, except the units. Without limiting the generality of the foregoing, the common areas and facilities shall include the following, whether located within the bounds of a unit or not:

- (1) All structural parts of the building, including, without limitation, foundations, supporting walls, ceilings and roofs;
- (2) Patios, yards, courts and driveways;
- (3) The roadways contained therein;
- (4) Any utility pipe or line or systems servicing more than a single unit, and all ducts, wires, conduits and other accessories used therewith, but excluding any pipe or line or accessory

connecting a single unit to a main or central pipe or line or system or to a pipe or line or system servicing more than a single unit;

(5) All other parts of the condominium property necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as common areas and facilities in the drawings;

(6) All repairs, replacements or improvements of the foregoing.

4. SUBMISSION TO CONDOMINIUM OWNERSHIP. Declarant hereby submits the above-described property, tract of land, building and any improvements constructed thereon or hereafter to be constructed, together with all appurtenances thereto, to the provisions of the Act as a condominium project and this Declaration is submitted in accordance with the terms of the provisions of the Act and shall be construed and interpreted in accordance therewith.

5. COVENANTS TO RUN WITH THE LAND. This Declaration containing covenants, conditions and restrictions relating to the project shall be enforceable equitable servitudes and shall run with the land, and this Declaration and servitudes shall be binding upon Declarant, its successors and assigns and upon all unit owners or subsequent unit owners of all or any part of the condominium project and upon their grantees, mortgagees, successors, heirs, executors, administrators, leasees, devisees and assigns.

6. STATEMENT OF USES, PURPOSES AND RESTRICTIONS.

A. Purposes. The purpose of this condominium project is to provide housing for the unit owners and their respective families, tenants, guests and servants in accordance with the provisions of the Utah Condominium

Ownership Act.

B. Restrictions on Use. The units and common areas and facilities shall be used and occupied only as follows:

(1) No part of the condominium project shall be used for other than housing and the related common purposes for which the condominium property was designated.

(2) There shall be no obstruction of the common areas and facilities nor shall anything be stored in the common areas and facilities without the prior written consent of the Management Committee, except as is otherwise provided herein.

(3) Nothing shall be done or kept in any unit or in the common areas and facilities which will increase the rates of insurance on the building or units or contents thereof beyond that customarily kept for residential use, without the prior written consent of the Management Committee. No unit owner shall permit anything to be done or kept in his unit or in the common areas and facilities which is likely to or will result in the cancellation of insurance on the building, or the contents thereof, or which would be in violation of any law or regulation or any governmental authority. No waste shall be committed in the common areas or facilities.

(4) No unit owner shall cause or permit anything (including, without limiting the generality of the foregoing, any sign, awning, canopy, shutter, storm door, screen door, radio or television antenna) to hang, be displayed, or otherwise,

attached to or placed on the exterior walls or roof or any part thereof, or to the outside of windows or doors, without prior written consent of the Management Committee.

(5) No animals or birds of any kind shall be kept in any unit or in the common areas and facilities by unit owners, except that dogs, cats and other generally recognized household pets may be kept in units, subject to the rules adopted by the Management Committee and provided further that any such pet which shall create a disturbance or be a nuisance shall be permanently removed from the condominium project within ten (10) days notice from the Management Committee.

(6) No noxious or offensive activity of any kind shall be carried on in any unit or in the common areas or facilities, nor shall anything be done therein, either wilfully or intentionally, which may be or is likely to become an annoyance or nuisance to the other unit owners or occupants.

(7) Except as otherwise provided herein, nothing shall be done to or in any unit, to or on any common area and facility which will impair the structural integrity of the building or any part thereof or which would structurally change the building or any part thereof.

(8) No clothes, sheets, blankets, laundry, bicycles, recreational equipment, storage items or other articles of any kind shall be hung out or exposed on any part of the common areas and facilities in any manner as to be visible from any other unit, except as the rules and regulations of

unit owners association may otherwise provide. The common areas and facilities shall be kept free of all rubbish, debris and any other unsightly material. Any drapes or curtains placed in units shall be lined with white material under areas where there is exposure to view from the common area.

(9) There shall be no playing, lounging or placing of baby carriages, playpens, bicycles, wagons, toys, vehicles, benches, chairs or other matter in or on any part of the common areas and facilities, except as the foregoing is subject to the rules promulgated by the Management Committee.

(10) No industry, business, trade, occupation or profession of any kind, whether for commercial, religious, educational, charitable, or any other purpose, shall be conducted, maintained or permitted on any part of the condominium project, except as may be permitted by the Management Committee and subject to the rules, nor shall "For Sale" or "For Rent" signs or other window display or advertising be maintained or permitted by any unit owner on any part of the condominium property or in any unit therein, except that:

(a) The Declarant may perform or cause to be performed such work as is incident to the sale, repair or alteration of the condominium property, or to the sale or lease of units owned by the Declarant, including advertising and signs showing the location of model units and the like.

(b) The Declarant or its agents may

place "For Sale" or "For Rent" signs on any unsold or unoccupied units and may place such other signs on the condominium property for the purpose of facilitating the sale or lease of units by any unit owner, mortgagee or the association of unit owners.

(c) The association of unit owners or the Management Committee or its agents or representatives may place "For Sale" or "For Rent" signs on any units or on the condominium project for the purpose of facilitating the sale or lease of units by any unit owner, mortgagee or the association of unit owners.

(11) Boats, campers, recreational vehicles and extra automobiles shall be subject to the rules and regulations promulgated by the Management Committee. The Management Committee shall have the power to designate areas for the location of boats, campers, recreational vehicles and extra automobiles and the like or to preclude them from the condominium project or take whatever action is deemed reasonable and necessary in maintaining the Kimball Condominiums as a high quality residential community. The Management Committee shall also have the power to designate visitor and/or reserved parking areas.

#### 7. OWNERSHIP AND USE.

A. Ownership of a Unit. Except with respect to any of the common areas and facilities located within the bounds of a unit, each unit owner shall be entitled to the exclusive ownership and possession of his unit and to the ownership of a percentage undivided interest

in the common area and facilities.

B. Prohibition against Subdivision of Unit. No unit owner shall, by deed, plat or otherwise, subdivide or in any manner cause his unit to be separated into tracts or parcels smaller than the unit shown on the map.

C. Ownership of Common Areas and Facilities. The common areas and facilities shall be owned by the unit owners as tenants in common and ownership thereof shall remain undivided. No action for partition of any part of the common areas and facilities shall be maintainable, except as specifically provided in the Utah Condominium Ownership Act, nor may any unit owner otherwise waive or release any rights in the common areas and facilities.

D. Use of Common Areas and Facilities. Each unit owner may use the common areas and facilities in accordance with the purposes for which they are intended, provided such use shall also be consistent with this Declaration and the By-Laws, which right of use shall be appurtenant to and run with the unit.

E. Interest in Common Areas and Facilities. The percentage of undivided interest in the common area and facilities has been set forth on Appendix "C".

8. PROCESS AGENT. The name and address of the person in Salt Lake County, State of Utah, appointed as first agent to receive service of process for all matters pertaining to the project under the Utah Condominium Ownership Act is:

The agent may be changed from time to time by filing

appropriate instruments.

9. PERCENTAGE OF OWNERSHIP AND VOTING. The ownership in the common areas and facilities of the condominium for all purposes, including voting, is set forth in Appendix "C".

The common expenses shall be allocated accordingly.

10. EASEMENTS.

A. The Management Committee may hereafter grant easements for utility purposes for the benefit of the condominium property, including the right to install, lay, maintain, repair and replace water mains and pipes, sewer lines, gas mains, telephone wire equipment and electrical conduits and wires over, under, along and through any portion of the common areas and facilities.

B. Declarant shall have a transferable easement over and on the common areas and facilities for the purpose of making improvements on the land within the project or on any additional land under this Declaration and the Act and for the purposes of doing all things reasonably necessary and proper in connection with the same.

C. Declarant and their duly authorized agents, representatives and employees shall have the right to maintain sales offices and model units on the land within the project.

D. To the extent that any damage is inflicted on any part of the condominium project by any person or persons utilizing the easements reserved by this Declaration or created by Subsections "A", "B" or "C" or this Section 10, the Declarant, together with person or persons causing the same, shall be jointly and severally liable for the prompt repair of the damage

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and for the restoration of the same to a condition compatible with the remainder of the condominium project.

E. Each unit shall be subject to such easements as may be necessary for the installation, maintenance, repair or replacement of any common areas and facilities located within the boundaries of such unit.

F. In the event that, by reason of the construction, reconstruction, settlement or shifting of the building, any part of the common areas and facilities encroach or shall hereafter encroach upon any part of any unit or any part of any unit encroaches or shall hereafter encroach upon any part of the common areas and facilities or any other unit, valid easements for such encroachment and the maintenance of such encroachment are hereby established and shall exist for the benefit of such unit and the common areas and facilities, as the case may be, so long as all or any part of the building containing any such unit shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of any unit owner or owners of the common areas and facilities if such encroachment occurred due to the willful conduct of such unit owner or owners.

11. EXCLUSION OF WARRANTIES. Each unit and all common areas are sold by Declarant with a one-year warranty as to structural or mechanical defects, whether they be apparent or latent. The Declarant does not warrant the merchantability of any part of the units or the common areas. The Declarant does not warrant that any part of any unit or the common area is fit for any particular purpose. Anyone purchasing a condominium waives any right he may have to

bring an action against Declarant for breach of warranty. No suit, whether in equity or at law, shall be maintainable against Declarant by the unit owners, individually or by the association of unit owners, by reason or any alleged breach of an express or implied warranty, except in connection with the one-year warranty noted above.

12. MORTGAGE PROTECTION.

A. Any "right to first refusal" contained in the condominium documents shall not impair the rights to a first mortgage to:

(1) Foreclose or take title to a condominium unit, pursuant to the remedies provided in the mortgage, or

(2) Accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or

(3) Sell or lease a unit acquired by the mortgagee.

B. Any first mortgagee who obtains title to a condominium unit, pursuant to the remedies provided in the mortgage or foreclosure of the mortgage, will not be liable for such unit's unpaid dues or charges which accrue prior to the acquisition of title to such unit by the mortgagee.

C. Unless at least two-thirds (2/3) of the first mortgagees (based on one vote for each first mortgage owned) or owners (other than the sponsor, developer or builder) of the individual condominium units have given their prior written approval, the condominium homeowners association shall not be entitled to:

(1) By act or omission, seek to abandon or terminate the condominium project;

(2) Change the prorata interest or obligations of any individual condominium unit for the purpose of:

(a) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or

(b) determining the prorata share of ownership of each condominium unit in the common elements.

(3) Partition or subdivide any condominium unit;

(4) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common elements (the granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the condominium project shall not be deemed a transfer within the meaning of this clause);

(5) if there is a steam boiler in operation in connection with the Mortgaged Premises, there must be in force boiler explosion insurance evidenced by the standard form of boiler and machinery insurance policy and providing as a minimum \$50,000 per accident per location;

(6) if the condominium project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket" policy of flood insurance on the condominium project must be maintained in the amount of the aggregate of the outstanding principal balances of the mortgage loans on the condominium

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units comprising the condominium project or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less. The name of the insured under each required policy must be stated to be "The Association of Unit Owners of the Kimball Condominiums."

(7) Use hazard insurance proceeds for losses to any condominium property (whether to units or to common elements) for other than the repair, replacement or reconstruction of such condominium property, except as provided by statute in case of substantial loss to the unit and/or common elements in the condominium project.

D. Any proposal or plan pursuant to which the condominium project is subject to phasing or add-ons complies with the following limitations:

(1) Condominium unit owner's undivided interest in the common elements must be stated in the Declaration of Condominium; and the conditions whereby any change in such percentage of undivided interest in common elements may take place are fully described in such Declaration, together with a description of the real property which will become subject to the condominium project if such alternative percentage interest becomes effective; and

(2) No change in the percentage interests in the common elements may be affected pursuant to such phasing or add-on plan more than seven years after the Declaration becomes effective.

E. All taxes, assessments and charges which may become liens prior to the first mortgage under local

law shall relate only to the individual condominium units and not to the condominium project as a whole.

F. Anything contained herein to the contrary, no provision of the condominium constituent documents gives a condominium unit owner, or any other party, priority over any rights of the first mortgagee of the condominium unit, pursuant to its mortgage, in the case of a distribution to such unit owners of insurance proceeds or condemnation awards for losses or to a taking of condominium units and/or common areas.

14. AMENDMENT. Except for the provisions herein for the benefit of any first mortgagee, these Declarations and/or the Map may be modified or amended by the vote of fifty-one percent (51%) of all unit owners (holders of the common interests) at a meeting of unit owners duly held for such purposes. Amendments can only be made with the written approval of those mortgagees holding mortgages constituting first liens upon two-thirds of the condominium units. Any amendment shall be affective by the recording of an instrument wherein the Management Committee certifies that not less than fifty-one percent of all unit owners and two-thirds of the mortgagees holding mortgages, which constitute first liens upon any of the units, have approved and consented to any such amendment.

15. SEVERABILITY. The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not effect the remaining portions of this instrument or any part hereof, all of which are inserted subject to their being held valid in law and in the event that one or more of the phrases, sentences, clauses, paragraphs or sections contained therein should be invalid or should operate to render this agreement invalid, this instrument

shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs, section or sections had not been inserted.

16. TOPICAL HEADINGS. The topical headings of the paragraphs contained in this Declaration are for convenience only and do not define, limit or control the interpretation of the paragraphs of this Declaration.

17. GENDER. The singular, whenever used herein, shall be construed to mean the plural whenever applicable and the necessary changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as through in each case fully expressed.

18. AGREEMENT WITH SALT LAKE CITY CORPORATION. It is understood that a conditional variance has been approved by the Salt Lake City Corporation, wherein the required off-street parking for the project is deficient to meet City requirements, however the City by virtue of said variance has agreed that the Association shall provide a total of 80 off-street parking spaces at its own expense. It is understood that no more than 21 of these spaces will be on the premises of the Kimball Condominiums, and therefore at least an additional 59 off-street parking spaces shall be leased by the Homeowners Association at its own expense, pursuant to such terms as can be negotiated by the Association. It shall be the duty of the Association to insure that at least a total of 80 parking spaces for owners and visitors will be continuously provided pursuant to written lease agreements with terms and conditions satisfactory to the City, and to provide copies of newly executed leases to the City as evidence of compliance with the requirements of the granting of the variance. Further, the Association agrees to provide at least 30 days written notice to the City prior to the termination of any parking lease agreement. The expense for such lease shall be a common

expense assessed against the members of the Association pursuant to its operating budget.

The undersigned constitute all of the owners of Kimball Condominium.

Myron B. Child, Jr.  
MYRON B. CHILD, JR.  
Owner and Declarant

FRANKLIN FINANCIAL  
A corporation

By Richard A. Christensen  
RICHARD A. CHRISTENSEN  
President

STATE OF UTAH )  
: ss.  
COUNTY OF SALT LAKE )

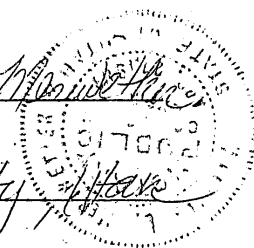
On the 14 day of August, 1979, personally appeared before me Myron B. Child, Jr., who being duly sworn on oath did state that he is one of the two owners of Kimball Condominium, and that he is the Declarant, and did acknowledge to me that he did execute the same.

My commission expires:

April 27, 1983

Valerie L. Maxwell-Hiscoe  
NOTARY PUBLIC  
Residing at:

Salt Lake City

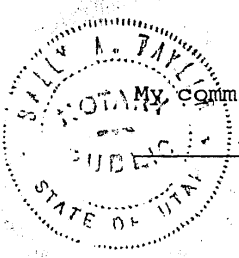


STATE OF UTAH )  
: ss.  
COUNTY OF SALT LAKE )

On the 1st day of August, 1979, personally appeared before me Richard A. Christensen, who being by me duly sworn says that he is the President of Franklin Financial, the corporation that executed the above and foregoing instrument and that said instrument was signed in behalf of said corporation by authority of its by-laws (or by authority of a

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resolution of its board of directors) and said Richard A. Christensen acknowledged to me that said corporation executed the same, and that said corporation is one of the two owners of Kimball Condominium.



My commission expires:

7-12-83

Sally A. Taylor  
NOTARY PUBLIC  
Residing at:

Bountiful, Utah

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APPENDIX "A"

Legal description for Kimball Condominiums:

Beginning at the SW Corner of Lot 4, Block 93, Plat A, Salt Lake City Survey, thence S 0°02'13" E 30.75'; thence N 89°57'47" E, 115.85'; thence S 0°02'13" E, 11.0'; thence N 89°57'47" E, 66.0'; thence N 0°02'13" W, 11.0'; thence N 89°57'47" E, 41.15'; thence S 0°02'13" E, 3.0'; thence N 89°57'47" E, 29.0'; thence N 0°02'13" W, 9.0'; thence N 89°57'47" E, 46.0'; thence N 0°02'13" W, 123.75'; thence S 89°57'47" W, 298.0'; thence S 0°02'13" E, 99.0' to the point of beginning, containing 0.90 acres, subject to a 5' right-of-way directly south of the north property line, together with a right-of-way over the following:

Commencing 61' south of the northwest corner of Lot 4 in said block and running thence south 5'; thence East 269'; thence north 5'; thence west 269' to the point of commencement, together with the following right-of-way:

Commencing 124.25' north of the southwest corner of Lot 3 in said block and running thence north 10'; thence East 115.85'; thence South 10'; thence West 115.85' to the point of commencement.

APPENDIX "B"  
KIMBALL CONDOMINIUMS

ARTICE I

Plan of Condominium Unit Ownership

Section 1. Condominium Unit Ownership. The property located in Salt Lake County, Utah, and more particularly described in Appendix "A", hereinafter called the Condominium, has been submitted to the provisions of Utah Condominium Ownership Act, by the declaration recorded in the office of the Salt Lake County Recorder, Weber County, simultaneously herewith.

Section 2. Applicability of By-Laws. The provisions of these By-Laws are applicable to the condominium and to the use and occupancy thereof. The term "condominium property" as used herein shall include the land, the buildings and all other improvements thereon, all easements, rights and appurtenances belonging thereto, and all other property personal or mixed, intended for use in connection therewith, all of which are intended to be submitted to the provisions of the Utah Condominium Ownership Act.

Section 3. Application. All present and future owners, mortgagees, lessees and occupants of condominium units and their employees, and any other persons who may use the facilities of the condominium in any manner are subject to these By-Laws, the Declaration and the rules and regulations pertaining to the use and operation of the condominium property. The acceptance of a deed or conveyance, or the entering into of a lease, or the act of occupancy of a condominium unit shall constitute an acceptance of the provisions of these instruments and an agreement to comply therewith.

Section 4. Office. The condominium Management Committee may maintain an office. Correspondence should be mailed to the attention of the Management Committee, Kimball Condominiums \_\_\_\_\_

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ARTICLE II

Management Committee

Section 1. Number and Qualification. The affairs of the condominium shall be governed by the Management Committee. Until eighteen months have elapsed from the time the Declaration and By-Laws have been recorded or until three-fourths of the units are conveyed to individual owners, whichever occurs first, Kimball (the "Declarant") in its sole discretion may determine, shall have the right to select the Management Committee, and thereafter until their successors shall have been elected by the unit owners. The Management Committee shall consist of such of the officers and agents of the Declarant as shall have been designated by the Declarant until said eighteen months have elapsed or until three-fourths of the units conveyed. Thereafter the Management Committee shall be composed of six persons, all of whom shall be the owners, spouses of owners or mortgagees of the condominium units; or, in the case of partnership owners or mortgagees, members or employees of such partnership, or in the case of corporate owners or mortgagees, officers, shareholders or employees of such corporations; or in the case of fiduciary owners or mortgagees, fiduciaries or officers or employees of such fiduciaries.

Section 2. Powers and Duties. The Management Committee shall have the powers and duties necessary for the administration of the affairs of the condominium, except as such powers and duties as by law or by the Declaration or by

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these By-Laws may not be delegated to the Management Committee by the unit owners. The powers and duties to be exercised by the Management Committee shall include, but shall not be limited to, the following:

(a) Operation, care, upkeep and maintenance of the common elements;

(b) Determination of the amounts required for operation, maintenance, and other affairs of the condominium;

(c) Collection of the common charges from the unit owners;

(d) Employment and dismissal of personnel as necessary for the efficient maintenance and operation of the condominium;

(e) Adoption and amendment of rules and regulations covering the details of the operation and use of the condominium property;

(f) Opening of bank accounts on behalf of the condominium and designating the signatories required therefor;

(g) Obtaining insurance for the condominium property, including the condominium units, pursuant to the provisions contained in the declaration; and

(h) Making repairs, additions and improvements to, or alterations of, the condominium property, and repairs to and reconstruction of the property in accordance with the provisions of the Declaration after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings;

(i) Acquiring by purchase or lease such capital assets and equipment as may be necessary for the management of the condominium, including, but not

limited to, the purchase of a condominium unit to be used as an office, all office furniture, office equipment, maintenance equipment, trucks and the like;

(j) Taking all steps necessary to incorporate the association of unit owners under the provisions of the Utah Business Corporation Act, Section 16-10-1, et seq., Utah Code Annotated, 1953 (as amended).

Section 3. Managing Agents and Manager. The Management Committee may employ for the condominium a managing agent and a manager at the compensation established by the Management Committee to perform such duties and services as the Management Committee shall authorize, including, but not limited to, the duties listed in subdivisions (a), (c), (d), (g) and (h) of Section 2 of this Article II. The Management Committee may delegate to the manager or managing agent all of the powers granted to the Management Committee by these By-Laws other than the powers set forth in subdivisions (b), (e), (f), (h) and (i) of Section 2 of this Article II. If a management agreement is entered into, it shall be for no more than one year's duration and shall be terminable by either party, without cause, by giving sixty days written notice.

Section 4. Election and Term of Office. At the first annual meeting of the unit owners, the term of office of three members of the Management Committee shall be fixed at three years and the term of office of three members of the Management Committee shall be fixed at one year. At the expiration of the initial term of office of each respective member of the Management Committee, his successor shall be elected to serve for a term of three years. The members of the Management Committee shall hold office until their respective successors shall have been elected by the unit

owners.

Section 5. Removal of Members of Management Committee.

At any regular or special meeting of unit owners, after the unit owners have assumed the management responsibility, any one or more of the members of the Management Committee may be removed with or without cause by a majority of the unit owners and a successor may then and there or thereafter be elected to fill the vacancy thus created. Any member of the Management Committee whose removal has been proposed by the unit owners shall be given an opportunity to be heard at the time of the meeting.

Section 6. Vacancies. Vacancies in the Management

Committee caused by any reason other than the removal of a member thereof by a vote of the unit owners, shall be filled by a vote of a majority of the remaining members at a special meeting of the Management Committee held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum, and each person so elected shall be a member of the Management Committee for the remainder of the term of the member so removed and until a successor shall be elected at the next annual meeting of the unit owners.

Section 7. Organization Meeting. The first meeting of

the members of the Management Committee following the annual meeting of the unit owners shall be held within ten (10) days thereafter at such time and such place as shall be fixed by the unit owners at the meeting at which such Management Committee shall have been elected, and no notice shall be necessary to the newly elected members of the Management Committee in order to legally constitute such meeting, providing a majority of the whole Management Committee shall be present thereat.

Section 8. Regular Meetings. Regular meetings of the Management Committee may be held at such time and such place as shall be determined from time to time by a majority of the members of the Management Committee, but at least two such meetings shall be held during each fiscal year.

Notice of regular meetings of the Management Committee shall be given to each member of the Management Committee, by mail or telephone at least seven business days prior to the day named for such meeting.

Section 9. Special Meetings. Special meetings of the Management Committee may be called by the president on three business days notice to each member of the Management Committee, given by mail or telephone, which notice shall state the time, place and purpose of the meeting. Special meetings of the Management Committee shall be called by the president or secretary in like manner and on like notice on the written request of at least two members of the Management Committee.

Section 10. Waiver of Notice. Any member of the Management Committee may, at any time, waive notice of any meeting of the Management Committee in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Management Committee at any meeting of the Management Committee shall constitute a waiver of notice by him of the time and place thereof. If all of the members of the Management Committee are present at any meeting of the Management Committee, no notice shall be required and any business may be transacted at such meeting.

Section 11. Quorum of Management Committee. At all meetings of the Management Committee, a majority of the members thereof shall constitute a quorum for the transaction

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of business, and the vote of a majority of the members of the Management Committee present at a meeting in which a quorum is present shall constitute the decision of the Management Committee. If at any meeting of the Management Committee there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called, may be transacted without further notice.

Section 12. Fidelity Bonds. The Management Committee shall obtain adequate fidelity bonds for all officers, directors, managers, trustees, volunteers and employees of the condominium handling or responsible for condominium funds, which fidelity bond shall be in an amount of one and one-half times the estimated annual operating expenses and reserves for each year, with the owners association of the condominium being the named insured thereon. The premiums on such bonds shall constitute a common expense.

Section 13. Compensation. No member of the Management Committee shall receive any compensation from the condominium for acting as such.

Section 14. Liability of Management Committee. The members of the Management Committee, including Declarant, shall not be liable to the unit owners for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The unit owners shall indemnify and hold harmless each member of the Management Committee, including Declarant, against all contractual liability to others arising out of contracts made by the Management Committee on behalf of the condominium, unless such contract shall have been made in bad faith or contrary



to the provisions of the Declaration or these By-Laws. The members of the Management Committee, including Declarant, shall have no personal liability with respect to any contract made by them on behalf of the association of unit owners. It is intended that the liability of any unit owner arising out of any contract made by the Management Committee or out of the indemnity in favor of the members of the Management Committee shall be limited to such proportion of the total liability thereunder as his interest in the common elements bears to the interest of all the unit owners in the common elements. Every agreement made by the Management Committee or by the managing agent or by the manager on behalf of the condominium shall provide that the members of the Management Committee or the managing agent or the manager, as the case may be, are acting only as agents for the unit owners and shall have no personal liability thereunder (except as unit owners), and that each unit owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his interest in the common elements bears to the interests of all unit owners in the common elements.

Section 15. Right of Entry. The Management Committee or its duly authorized agents shall have the right to enter any or all units in the case of an emergency originating in or threatening such unit or any part of the project, whether or not the unit owner or occupant thereof is present at the time. The Committee or its duly authorized agent shall also have the right to enter into any and all of said units at all reasonable times as required for the purpose of performing emergency installations, alterations or repairs to the mechanical, electrical or other utility devices or installations located therein or thereon; provided, however, that such emergency, installation, alteration or repair is necessary

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to prevent damage or threatened damage to such unit or units in the project; and further provided, that the unit owner affected by entry shall first be notified thereof if available and if time and circumstances shall permit.

Section 16. Administrative Rules and Regulations. The Management Committee shall have the power to adopt, establish and amend by resolution, such building management, and operational rules as it may deem necessary for the maintenance, operation, management and control of the project and the committee may from time to time by resolution, alter, amend and repeal such rules. When a copy of any amendment or alteration or provision for repeal of any rule or rules has been furnished to the unit owners, such amendment, alteration, or repeal shall be deemed to be a part of such rules. Unit owners shall at all times, obey such rules and see that they are faithfully observed by those persons over whom they have or may exercise control and supervision, it being understood that such rules shall apply to and be binding upon all unit owners and/or occupants of any unit.

Section 17. Obligation to Comply with Rules. Each unit owner, tenant or occupant of a unit shall comply with the provisions of the Act, Declaration, By-Laws, the rules and regulations, all agreements and determinations lawfully made and/or entered into by the Management Committee or unit owners, when acting within the scope of their authority and any failure to comply with any of the provisions thereof shall be grounds for an action by the Management Committee for injunctive relief and/or to recover for any loss or damage resulting therefrom.

ARTICLE III

Unit Owners

Section 1. Annual Meetings. Promptly after three-

quarters of the units are conveyed to individual owners, or eighteen months after recordation of the Declaration has elapsed, whichever occurs first, the Declarant shall notify all unit owners of the first annual meeting of the unit owners which shall be held within thirty (30) days thereafter on a call issued by the president. At such meeting, the officers and directors of the Declarant shall resign as members of the Management Committee and all responsibilities and obligations Declarant may have shall cease, and all unit owners, including the Declarant, shall elect a new Management Committee which shall immediately assume all such responsibilities and obligations on behalf of the unit owners. Thereafter, the annual meetings of the unit owners shall be held on the 15th day of January of each succeeding year, unless such date shall occur on a Saturday or Sunday, in which event the meeting shall be held on the succeeding Monday. At such meetings the Management Committee shall be elected by ballot of the unit owners in accordance with the requirements of Section 4 of Article II of these By-Laws. So long as the Declarant shall own one or more condominium units, the Declarant shall be entitled to elect at least one member of the Management Committee who shall serve for a term of one year. This right shall expire four years from the date of recording the Declaration. The unit owners may transact such other business at such meetings as may properly come before them.

Section 2. Place of Meetings. Meetings of the unit owners shall be held at such suitable place convenient to the owners as may be designated by the Management Committee.

Section 3. Special Meetings. It shall be the duty of the president to call a special meeting of the unit owners if so directed by resolution of the Board of Managers or

upon a petition signed and presented to the secretary by the unit owners owning a total of at least twenty-five (25) percent of the common interest. The notice of any special meeting shall state the time, place and purpose of the meeting. No business shall be transacted at a special meeting, except as stated in the notice.

4. Notice of Meetings. The secretary shall mail to each unit owner of record a notice of each annual or special meeting of the unit owners, at least ten (10) days, but not more than twenty (20) days, prior to such meeting, stating the purpose thereof as well as the time and place where it is to be held, at the building or at such other address as such unit owner shall have designated by notice in writing to the secretary. The mailing of a notice of meeting in the manner provided in this section shall be considered service of notice.

Section 5. Adjournment of Meetings. If any meeting of unit owners cannot be held because a quorum has not attended, a majority in common interest of the unit owners who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

Section 6. Order of Business. The order of business at all meetings of the unit owners shall be as follows:

- (a) Roll call;
- (b) Proof of notice of meeting;
- (c) Reading of minutes of preceding meeting;
- (d) Report of officers;
- (e) Report of Management Committee;
- (f) Report of committees;
- (g) Election of inspectors of election (when so required);

(h) Election of members of the Management Committee (when so required);

(i) Unfinished business; and

(j) New business.

Section 7. Title to Condominium Units. Title to condominium units may be taken in the name of an individual or in the names of two or more persons, as tenants in common or as joint tenants, or in the name of a corporation or partnership, or in the name of a fiduciary.

Section 8. Voting. The owner or owners of each condominium unit, or some persons designated by such owner or owners to act as proxy on his or their behalf and who need not be an owner, shall be entitled to cast the votes appurtenant to such condominium unit at all meetings of unit owners. The designation of any such proxy shall be made in writing to the Secretary and shall be revocable at any time by written notice to the secretary by the owner or owners so designating. The total number of votes of all unit owners shall be 158 and each unit owner shall be entitled to cast one vote at all meetings of the unit owners. A fiduciary shall be the voting member with respect to any condominium unit owned in a fiduciary capacity.

Section 9. Majority of Unit Owners. As used in these By-Laws, the term "majority of unit owners" shall mean those unit owners more than fifty (50) percent of the total authorized votes of all unit owners present in person or by proxy and voting at any meeting of the unit owners.

Section 10. Quorum. Except as otherwise provided in these By-Laws or Declaration, the presence in person or by proxy of unit owners having thirty-five (35) percent of the total authorized votes of all unit owners shall constitute a quorum at all meetings of the unit owners.

Section 11. Majority Vote. The vote of a majority of unit owners at a meeting at which a quorum shall be present shall be binding upon all unit owners for all purposes except where a higher percentage vote is required by law, by the Declaration or by these By-Laws.

#### ARTICLE IV

##### Officers

Section 1. Designation. The principal officers of the condominium shall be the president, the vice-president, the secretary and the treasurer, all of whom shall be elected by the Management Committee. The Management Committee may appoint an Assistant treasurer and assistant secretary and such other officers as in its judgment may be necessary. The president and secretary must be members of the Management Committee.

Section 2. Election of Officers. Officers shall be elected annually by the Management Committee at the organizational meeting of each new Management Committee and shall hold office at the pleasure of the Management Committee.

Section 3. Removal of Officers. Upon the affirmative vote of a majority of the members of the Management Committee any officer may be removed, either with or without cause, and his successor may be elected at any regular meeting of the Management Committee or at any special meeting of the Management Committee called for such purpose.

Section 4. President. The president shall be the chief executive officer of the condominium. He shall preside at all meetings of the unit owners of the Management Committee. He shall have all of the general powers and duties which are incident to the office of president of a corporation organized under the Business Corporation Act of the State of Utah, including, but not limited to, the power

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to appoint from among the unit owners any committee which he decides is appropriate to assist in the conduct of the affairs of the condominium.

Section 5. Vice-President. The vice-president shall take the place of the president and perform his duties whenever the president shall be absent or unable to act. If neither the president nor the vice-president is able to act, the Management Committee shall appoint some other member of the Management Committee to act in the place of the president on an interim basis. The vice-president shall also perform such other duties as shall from time to time be imposed upon him by the Management Committee or by the president.

Section 6. Secretary. The secretary shall keep the minutes of all meetings of the unit owners and of the Management Committee. He shall have charge of such books and papers as the Management Committee may direct and he shall, in general, perform all the duties incident to the office of secretary of a corporation organized under the Business Corporation Act of the State of Utah.

Section 7. Treasurer. The treasurer shall have the responsibility for condominium funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of all required financial statements. He shall be responsible for the deposit of all moneys and other valuable effects in the name of the Management Committee or the managing agent in such depositories as may from time to time be designated by the Management Committee and he shall, in general, perform all the duties incident to the office of treasurer of a corporation organized under the Business Corporation Act of the State of

Utah.

Section 8. Agreements, Contracts, Deeds, Checks, Etc.

All agreements, contracts, deeds, leases, checks and other instruments of the condominium shall be executed by any two officers of the condominium or by such other person or persons as may be designated by the Management Committee.

Section 9. Compensation of Officers. No officer shall receive any compensation from the condominium for acting as such.

ARTICLE V

Operation of the Property

Section 1. Determination of Common Expenses and Common Charges. The Management Committee shall from time to time, and at least annually, prepare a budget for the condominium, determine the amount of the common charges required to meet the common expenses of the condominium and allocate and assess such common charges against the unit owners according to their respective common interests. The common expenses shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Management Committee, pursuant to the provisions of Section 2 of this Article V and the fees and disbursements of the Management Committee. The common expenses may also include such amounts as the Management Committee may deem proper for the operation and maintenance of the condominium property, including, without limitation, an amount for working capital of the condominium, for a general operating reserve and shall include for a reserve fund for replacements, maintenance and repairs and to make up any deficit in the common expenses for any prior year. The Management Committee shall advise each unit owner in writing of the amount of common charges payable by

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him and shall furnish copies of each budget on which such common charges are based to all unit owners and to their mortgagees. In the event that such assessment shall result in any excess for any one year, the Management Committee may refund the excess to the unit owners or apply such excess to assessments for the succeeding year.

That portion of the common assessments payable by each unit owner in and for each year or for a portion of a year shall be a sum equal to the same percentage as each unit owns in the common areas of the aggregate amount of such cash requirements for each year, or portion of a year, together with any additional sums accruing under the Declaration or these By-Laws, or the Act, and shall be payable monthly, in advance, or by such payments and installments as shall be required by the Management Committee and at such times as shall be provided by the Management Committee.

An adequate reserve fund for replacement of common element components must be established, which must be funded by monthly payments rather than by extraordinary special assessments. In addition, there must be a working capital fund for the initial months of operation of the project equal to at least two months' estimated common area charge for each unit.

The Management Committee shall have absolute discretionary authority to prescribe the manner of maintaining and operating the project and to determine the cash requirements of the Management Committee to be paid as aforesaid by the owners under this Declaration. Any such determination by the Management Committee within the bounds of the Act, By-Laws or the Declaration, shall be final and conclusive on the unit owners, and any expenditures made by the Management Committee within the grounds of the Act, By-Laws or Declaration

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shall be deemed necessary and proper for such purpose as against the unit owners.

Section 2. Insurance. The Management Committee shall be required to obtain and maintain, to the extent obtainable, the following insurance:

(a) Fire insurance with extended coverage, vandalism and malicious mischief endorsements, insuring the entire condominium buildings (including all of the condominium units and the bathroom and kitchen fixtures initially installed therein by the Declarant, but not including furniture, furnishings or other personal property supplied or installed by unit owners), together with all air conditioning equipment and other service machinery contained therein; such insurance shall cover the condominium, the Management Committee and all unit owners and their mortgagees, as their interests may appear, in an amount equal to the full replacement value of the buildings, without deduction for depreciation. Each policy shall contain a standard mortgagee clause in favor of each mortgagee of a condominium unit which shall provide that proceeds shall be payable to such mortgagee as its interest may appear subject, however, to payment provisions in favor of the Management Committee hereinafter set forth:

(b) Workmen's compensation insurance;

(c) Water damage insurance;

(d) Such other insurance as the Management Committee may designate.

All such policies shall provide that adjustment of loss shall be made by the Management Committee and the net proceeds thereof shall be payable to the Management Committee.

All policies of physical damage insurance shall contain

waivers of subrogation and waivers of any defense based on co-insurance or of invalidity arising from any acts of the insured and shall provide that such policies may not be cancelled or substantially modified without at least ten (10) days prior written notice to all of the insureds, including all mortgagees of condominium units. Duplicate originals of all policies of physical damage insurance and of all renewals thereof, together with proof of payment premiums, shall be delivered to all mortgagees of condominium units at least ten (10) days prior to expiration of the then current policies. Prior to obtaining any policy of fire insurance or any renewal thereof, the Management Committee shall obtain an appraisal from a fire insurance company or otherwise of the full replacement value of the building, including all of the condominium units and all of the common elements therein, without deduction for depreciation, for the purpose of determining the amount of fire insurance to be effected pursuant to this action. Hazard insurance shall be written by a carrier which has a financial rating by Best's Insurance Reports of Class VI or better.

The Management Committee shall also be required to obtain and maintain, to the extent obtainable, public liability insurance in such amounts as the Management Committee may from time to time determine, covering each member of the Management Committee, the managing agent, the manager and each unit owner. Such public liability coverage shall also cover cross liability claims of one insured against another. The Management Committee shall review such limits once each year; however, the minimum coverage shall be \$500,000.

Unit owners shall not be prohibited from carrying other insurance for their own benefit; provided, however, that all

policies shall contain waivers of subrogation and further provided that the liability of the carriers issuing insurance obtained by the Management Committee shall not be affected or diminished by reason of any such additional insurance carried by any unit owner.

Section 3. Repair or Reconstruction After Damage. In the event of damage or destruction of any building as a result of fire or other casualty (unless seventy-five (75%) percent or more of the building is destroyed or substantially damaged and seventy-five (75%) percent or more of the unit owners do not duly and promptly resolve to proceed with repair or restoration), the Management Committee shall arrange for the prompt repair and reconstruction of the buildings (including any damaged condominium units and any kitchen or bathroom fixtures initially installed therein by the Declarant, but not including any wall, ceiling or floor decorations or coverings or other furniture, furnishings, fixtures or equipment installed by unit owners in the condominium units) and the Management Committee shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. Any cost of such repair and restoration in excess of the insurance proceeds shall constitute a common expense and the Management Committee may assess all the unit owners for such deficit as part of the common charges.

If seventy-five (75%) percent or more of the building is destroyed or substantially damaged and seventy-five (75%) percent or more of the unit owners do not duly and promptly resolve to proceed with repair or reconstruction, the condominium property shall be subject to an action for partition by any unit owner or lienor, as if owned in common, in which event the net proceeds of sale, together with the net

proceeds of insurance policies (or if there shall have been a repair or restoration pursuant to the first paragraph of Section 3 and the amount of insurance proceeds shall have exceeded the cost of such repair or restoration then the excess of such insurance proceeds) shall be divided by the Management Committee among all of the unit owners in proportion to their respective common interests, after first paying out of the share of each unit owner the amount of any unpaid liens on his condominium unit, in the order of the priority of such liens.

Section 4. Payment of Common Charges. All unit owners shall be obligated to pay the common charges assessed by the Management Committee, pursuant to the provisions of Section 1 of Article V, at such time or times as the Management Committee shall determine.

No unit owner shall be liable for the payment of any part of the common charges assessed against his condominium unit subject to a sale, transfer, or other conveyance by him thereof (made in accordance with the provisions of Section 1 of Article VII of these By-Laws). Joint purchasers of a condominium unit shall be jointly and severally liable for the payment of common charges assessed against a condominium unit subsequent to the acquisition by them of such condominium. A mortgagee or other purchaser of a condominium unit shall not be subject to a lien for the payment of common charges assessed prior to the foreclosure sale.

Section 5. Collection of Assessments. The Management Committee shall assess common charges against the unit owners from time to time and at least annually and shall take prompt action to collect from a unit owner any common charge due which remains unpaid by him for more than thirty (30) days from the due date of its payment.

Section 6. Default in Payment of Common Charges.

(a) If any unit owner shall fail or refuse to make any payment of the common expenses when due, the amount thereof shall constitute a lien on the interest of the owner of the property and upon the recording of notice thereof by the Management Committee, shall be a lien upon the unit owner's interest in the property prior to all other liens and encumbrances, recorded and unrecorded, except only:

- (1) tax and special assessment liens; and
- (2) prior recorded encumbrances which are superior as a matter of law.

(b) In the event of default by any unit owner in paying to the Management Committee the assessed common charges, such unit owner shall be obligated to pay interest at the rate of twelve (12%) percent per annum on such common charges from the date due thereof, together with all expenses, including attorney fees, incurred by the Management Committee in any proceeding brought to collect such unpaid common charges. The Management Committee shall have the right and duty to attempt to recover such common charges, together with interest thereon, and the expenses of the proceeding, including attorney fees, in an action brought against such unit owner or by a foreclosure of the lien on such condominium unit.

(c) Upon payment of a delinquent assessment the Management Committee shall cause a satisfaction of lien filed in cases where a notice of lien has been filed.

(d) If a unit owner shall at any time let or sublet the unit and shall be in default for a period of one month in the payment of any assessments, the Management

Committee may, at its option and so long as such default shall continue, demand and receive from any tenant or subtenant of the owner occupying the unit the rent due or becoming due and payment of such rent to the Management Committee shall be payment and discharge of such tenant or subtenant and the owner of the unit to the extent of the amount so paid. No action on the part of the Management Committee under this section shall have the effect of relieving its unit owner of primary liability.

Section 7. Foreclosure of Liens for Unpaid Charges.

In any action brought by the Management Committee to foreclose a lien on a condominium unit because of unpaid common charges, the unit owner shall be required to pay a reasonable rental for the use of his condominium unit and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect such rental. The Management Committee, acting on behalf of all unit owners, shall have power to purchase such condominium unit at the foreclosure sale and to acquire, hold, lease, mortgage, vote the votes appurtenant to convey, or otherwise deal with the same. A suit to recover money judgment for unpaid common charges shall be maintainable without foreclosing or waiving the lien securing the same.

Section 8. Statement of Common Charges. The Management Committee shall promptly provide any unit owner who makes a request in writing with a written statement of his common charges.

Section 9. Abatement and Enjoining of Violations. The violation of any rule or regulation adopted by the Management Committee, or the breach of any By-Law contained herein, or the breach of any provision of the Declaration or the

Act, shall give the Management Committee the right, in addition to any other rights available at law or set forth in these By-Laws:

(a) to enter the condominium unit in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting unit owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Management Committee shall not thereby be deemed guilty in any manner of trespass; or

(b) to enjoin, abate or remedy such thing or condition by appropriate legal proceeding.

Section 10. Maintenance and Repair.

(a) All maintenance of and repairs to any condominium unit, structural or non-structural, ordinary or extraordinary (other than maintenance of and repairs to any common elements contained therein not necessitated by the negligence, misuse or neglect of the owner of such condominium unit), shall be made by the owner of such condominium unit. Each unit owner shall be responsible for all damage to any other condominium unit and to the common elements resulting from his failure to effect such maintenance and repairs.

(b) All maintenance, repairs and replacements of the common elements, whether located inside or outside of the condominium units (unless necessitated by the negligence, misuse or neglect of the unit owner, in which case such expense shall be charged to the unit owner), shall be made by the Management Committee and be charged to all the unit owners as a common expense.

Section 11. Use of Condominium Units. In order to



provide for congenial occupancy of the condominium property and for the protection of the values of the condominium units, the use of the condominium property shall be subject to the following limitations:

(a) The condominium units shall be used for residences only, except as the association may choose to purchase and use a unit as a management office or for any other lawful purpose not repugnant to a residential development.

(b) The common elements shall be used only for the furnishing of the services and facilities for which they are reasonably suited and which are incidental to the use and occupancy of condominium units.

(c) No nuisances shall be allowed on the condominium property nor shall any use or practice be allowed which is a source of annoyance to its residents or which interferes with the peaceful possession or proper use of the condominium property by its residents.

(d) No immoral, improper, offensive or unlawful use shall be made of the condominium property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be complied with. Such compliance shall be accomplished at the sole expense of the unit owners or the Management Committee, whichever shall have the obligation to maintain or repair such portion of the condominium property.

(e) No portion of a condominium unit (other than the entire condominium unit) may be rented and no transient tenants may be accommodated therein.

Section 12. Additions, Alterations or Improvements by Unit Owners. No unit owner shall make any structural addition,

alteration or improvement in or to his condominium unit, without the prior written consent thereto of the Management Committee. The Management Committee shall have the obligation to answer any written request by a unit owner for approval of a proposed structural addition, alteration or improvement in such unit owner's condominium unit within fifteen (15) days of such request, and failure to do so within the stipulated time shall constitute a consent by the Management Committee to the proposed addition, alteration or improvement. Any application to any governmental authority for a permit to make an addition, alteration or improvement in or to any condominium unit shall be executed by the Management Committee. The Management Committee shall not be liable to any contractor, subcontractor, materialman or to any person sustaining personal injury or property damage, for any claim arising in connection with such addition, alteration or improvement. The provisions of this Section 12 shall not apply to condominium units owned by the Declarant until such condominium units shall have been initially sold by the Declarant and paid for.

Section 13. Water Charges and Sewer Rents. Water charges shall be supplied to all of the condominium units and the common elements through one or more building meters and the Management Committee shall pay, as a common expense, all charges for water consumed on the condominium property, together with all related sewer rents arising therefrom, promptly after the bills therefor are rendered. In the event of a proposed sale of the condominium unit by the owner thereof, the Management Committee, on request of the selling unit owner, shall execute and deliver to the purchaser of such condominium unit or to the purchaser's title insurance company or lender, a letter agreeing to pay all

charges for water and sewer rents affecting the property as of the date of closing of title to such condominium unit promptly after such charges shall have been billed.

Section 14. Electricity and Natural Gas. Electricity and natural gas serving the common elements, if any, shall be separately metered, and the Management Committee shall pay all bills for electricity and natural gas consumed in such portions of the common elements as a common expense.

Section 15. Taxes. Each unit and its percentage of undivided interest in common area and facilities shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, including but not limited to, advalorem liens and special assessments.

#### ARTICLE VI

##### Mortgages

Section 1. Mortgage of Condominium Units. No unit owner shall mortgage his condominium unit except by a mortgage or trust deed made to a bank, trust company, insurance company, federal savings and loan association, pension fund, other institutional lender, or any other mortgage company or individual. Any such mortgage or trust deed shall be substantially in the form on file with the Management Committee, except for such form changes or additions as may be required in order to permit the particular lender to make the mortgage loan.

Section 2. Notice to Management Committee. A unit owner who mortgages his condominium unit shall notify the Management Committee of the name and address of his mortgagee and shall file a conformed copy of the note and mortgage or trust deed with the Management Committee. The Management Committee shall maintain such information in a

book entitled "Mortgages of Condominium Units."

Section 3. Notice of Unpaid Common Charges. The Management Committee, whenever so requested in writing by a mortgagee of a condominium unit, shall promptly report any then unpaid common charges or other default by the owner of the mortgaged condominium unit.

Section 4. Notice of Default. The Management Committee when giving notice to a unit owner of a default in paying common charges or other default, shall send a copy of such notice to each holder of a mortgage covering such condominium unit whose name and address has theretofore been furnished to the Management Committee.

Section 5. Examination of Books. Each unit owner and each mortgagee of a condominium unit shall be permitted to examine the books of account of the condominium at reasonable times on business days, but not more often than twice monthly.

#### ARTICLE VII

##### Sales and Leases of Units

Section 1. Sales and Leases. No unit owner may sell or lease his condominium unit or any interest therein except by complying with the provisions of this section. A unit owner's sale of his condominium unit shall include the sale of:

(a) the undivided interest in the common elements appurtenant thereto; and

(b) the interest of such unit owner in any other assets of the condominium, hereinafter collectively called the appurtenant interests.

Section 2. No Severance of Ownership. No unit owner shall execute any deed, mortgage or other instrument conveying or mortgaging title to his condominium unit without including therein the appurtenant interests, it being the

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intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage or other instrument purporting to effect one or more of such interests, without including all such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the appurtenant interests of any condominium unit may be sold, transferred or otherwise disposed of, except as part of a sale, transfer or other disposition of the condominium unit to which such interests are appurtenant or as part of a sale, transfer or other disposition of such part of the appurtenant interests of all condominium units.

Section 3. Gifts and Devises, Etc. Any unit owner shall be free to convey or transfer his condominium unit by gift or to devise his condominium unit by will or to pass the same by intestacy, with restriction.

4. Payment of Assessments. No unit owner shall be permitted to convey, mortgage, pledge, hypothecate, sell or lease his condominium unit unless and until he shall have paid in full to the Management Committee all unpaid common charges theretofore assessed by the Management Committee against his condominium unit and until he shall have satisfied all unpaid liens against such condominium unit, except permitted by mortgages.

#### ARTICLE VIII

##### Condemnation

Section 1. Condemnation. In the event of a taking in condemnation or by eminent domain of any of the common areas, the award made for such taking shall be payable to the Management Committee. If seventy-five (75%) percent or more of the unit owners duly and promptly approve the repair

and reconstruction of such common areas, the Management Committee shall disburse the proceeds of such award to the contractors engaged in such repair and reconstruction in appropriate progress payments. In the event that seventy-five (75%) percent or more of the unit owners do not duly and promptly approve the repair and reconstruction of such common areas, the Management Committee shall disburse the net proceeds of such award in the same manner as they are required to distribute insurance proceeds where there is no repair or restoration of the damage as provided in Section 3 of Article V of these By-Laws.

#### ARTICLE IX

##### Records

Section 1. Records and Audits. The Management Committee or the managing agent shall keep detailed records of the actions of the Management Committee and the managing agent, minutes of the meeting of the Management Committee, minutes of the meetings of the unit owners, and financial records and books of account of the condominium, including a chronological listing of receipts and expenditures, as well as a separate account of each condominium unit which, among other things, shall contain the amount of each assessment of the common charges against such condominium unit, the date when due, the amounts paid thereon and the balance remaining unpaid. A written report summarizing all receipts and expenditures of the condominium shall be rendered by the Management Committee to all unit owners at least quarterly. In addition, an annual report of the receipts and expenditures of the condominium, certified by an independent certified public accountant, shall be rendered by the Management Committee to all unit owners and to all mortgagees of condominium units who have requested the same, promptly

after the end of each fiscal year.

## ARTICLE X

### Miscellaneous

Section 1. Notices. All notices to the Management Committee shall be sent by registered or certified mail in care of the managing agent or, if there is no managing agent, to the office of the Management Committee or to such other address as the Management Committee may hereafter designate from time to time. All notices to any unit owner shall be sent by registered or certified mail to the building or to such other address as may have been designated by him from time to time. All notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received.

Section 2. Invalidity. The invalidity of any part of these By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these By-Laws.

Section 3. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of these By-Laws or the intent of any provision thereof.

Section 4. Gender. The use of the masculine gender in these By-Laws shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 5. Waiver. No restriction, condition, obligation or provision contained in these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

## ARTICLE XI

### Amendments to By-Laws

Section 1. Amendments to By-Laws. Except as provided otherwise herein and except for the provisions herein for the benefit of any first mortgagee, these By-Laws may be modified or amended by the vote of fifty-one (51%) percent of all unit owners (holders of the common interests) at a meeting of unit owners duly held for such purposes. Amendments other than minor administrative matters can only be made with the written approval of those mortgagees holding mortgages constituting first liens upon two-thirds (2/3) of the condominium units; however, Section 1 of Article III, insofar as it provides that the Declarant (so long as it is the owner of one or more condominium units), shall be entitled to elect at least one member of the Management Committee; and Section 8 of Article II, insofar as it provides that the Declarant (so long as it is the owner of one or more condominium units), may vote the votes appurtenant thereto; and this Section 1 of Article XI may not be amended without the consent in writing of the Declarant (so long as the Declarant shall be the owner of one or more condominium units).

### ARTICLE XII

#### Conflicts

Section 1. Conflicts. These By-Laws are set forth to comply with the requirements of the Condominium Ownership Act of the State of Utah. In case any of these By-Laws conflict with the provisions of such statute or of the Declaration, the provisions of such statute or of the Declaration, as the case may be, shall control.

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APPENDIX C

KIMBALL CONDOMINIUMS

<u>Unit Designation</u>	<u>Size in Square feet</u>	<u>Percentage of Undivided Interest in the Common Areas and Facilities</u>	
101	420		
102	420		
103	420		
104	420	300 sq. ft.	0046685%
105	420	420 sq. ft.	0065359%
106	420	470 sq. ft.	0073140%
107	420		
108	420		
109	420		
110	420		
111	420		
112	420		
113	470		
114	300		
115	470		
116	300		
117	470		
118	300		
119	470		
120	300		
121	470		
122	300		
123	470		
124	300		
125	300		
126	470		
127	300		
128	470		
129	300		
130	470		
131	300		
132	470		
133	300		
134	470		
135	300		
136	470		
137	420		
138	420		
139	420		
140	420		
141	420		
142	420		
143	420		
144	420		
145	420		
146	420		
147	420		

<u>Unit Designation</u>	<u>Size in Square feet</u>
148	420
201	420
202	420
203	420
204	420
205	420
206	420
207	420
208	420
209	420
210	420
211	420
212	420
213	470
214	300
215	470
216	300
217	470
218	300
219	470
220	300
221	470
222	300
223	470
224	300
225	300
226	470
227	300
228	470
229	300
230	470
231	300
232	470
233	300
234	470
235	300
236	470
237	420
238	420
239	420
240	420
241	420
242	420
243	420
244	420
245	420
246	420
247	420
248	420

<u>Unit Designation</u>	<u>Size in Square feet</u>
301	420
302	420
313	470
314	300
315	470
316	300
317	470
318	300
319	470
320	300
321	470
322	300
323	470
324	300
325	300
326	470
327	300
328	470
329	300
330	470
331	300
332	470
333	300
334	470
335	300
336	470
337	420
338	420
339	420
340	420
341	420
342	420
343	420
344	420
345	420
346	420
347	420
348	420
425	300
426	470
427	300
428	470
429	300
430	470
431	300
432	470
433	300
434	470
435	300
436	470
437	420
438	420

<u>Unit Designation</u>	<u>Size in Square Feet</u>
439	420
440	420
441	420
442	420
443	420
444	420
445	420
446	420
447	420
448	420
503	420
<u>504</u>	<u>420</u>

160 Total Units 64,260 Total square feet

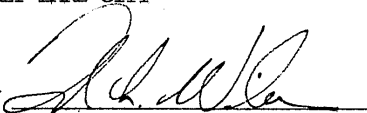
APPROVAL BY CITY

SALT LAKE CITY, a body corporate and politic, and the city in which the Kimball Condominium project is located, by and through its duly elected Mayor, does hereby give final approval to the said project, to the foregoing Declaration, to the Record of Survey Map recorded concurrently herewith, and to the attributes of the said Project which are mentioned in Section 57-8-35 (3) of the Utah Condominium Ownership Act, as amended and expanded by the Laws of Utah, 1975, Chapter 173, Section 18.

Dated: SEP. 04. 1979

SALT LAKE CITY

BY



Mayor

