

3788556

NOTE TO RECORDER: This document should be recorded and abstracted with respect to the property described in Exhibit "B".

WHEN RECORDED, RETURN TO:

Robert C. Hyde  
PARSONS, BEHLE & LATIMER  
P. O. Box 11898  
185 South State Street  
Salt Lake City, Utah 84147

126-00

Hayne Hestger  
Robert C. Hyde

REC'D  
MAY 3 7 13 PM '83  
Robert C. Hyde

KATE  
RECORDS  
SALT LAKE COUNTY  
UTAH

AMENDED AND RESTATED  
USE AND OCCUPANCY AGREEMENT

THIS AGREEMENT is made and entered into this 5<sup>th</sup> day of MAY, 1983, by Bertagnole Properties, a Utah general partnership with Bertagnole Investment Company Limited Partnership, a Utah limited partnership, and Franklin Financial, a Utah corporation, as its only general partners (which Bertagnole Properties shall hereinafter be referred to as the "Declarant") being the owner of all of the Units in the condominium project hereinafter described.

WHEREAS, Franklin Financial, a Utah corporation, as predecessor in interest to the Declarant, recorded a Second Amended Declaration of Condominium of The Kimball Condominiums on January 12, 1982 as Entry No. 3638967 in Book 5330 at Page 1324, of the Official Records of Salt Lake County (as amended by Amendment dated February 24, 1982 and recorded March 5, 1982 as Entry No. 3654014, Book 5347, Page 1092), thereby restating and amending in its entirety previously filed condominium documents, which Second Amended Declaration created what will be hereinafter referred to as "The Kimball Condominiums" or the "Project", which Kimball Condominiums are located on the real property described in Exhibit "A" attached hereto and incorporated herein by reference, and which Project consists of 153 Units as set forth in Exhibit "B" attached hereto and incorporated herein by reference, against which this Amended and Restated Use and Occupancy Agreement is to be recorded; and

WHEREAS, Declarant has acquired all of the title and interest of Franklin Financial and KTS in the Project and, with the exception of 7/50ths of Unit 348 and 1/50th of Unit 343, Declarant owns all of the Units in the Project; and

WHEREAS, KTS, a Utah corporation, filed with the Salt Lake County Recorder a Use and Occupancy Agreement dated

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February 5, 1982 and recorded March 29, 1982 as Entry No. 3661095, Book 5355, Pages 1327 through 1357, for the purpose of establishing a common scheme for the use, enjoyment, repair, maintenance, restoration and improvement of the Project; and

WHEREAS, Declarant desires, by filing this Agreement to amend and restate in its entirety the Use and Occupancy Agreement previously filed as described in the preceding paragraph, and thereby terminate and release from record said Use and Occupancy Agreement; and

WHEREAS, Declarant desires to file for record this Amended and Restated Use and Occupancy Agreement (hereinafter the "Agreement") for the purpose of establishing a common scheme and plan for the use, enjoyment, repair, maintenance, restoration and improvement of the Units therein, subject to the Declaration, and for the payment of taxes, assessments, insurance premiums, maintenance and other expenses pertaining to the Project.

NOW, THEREFORE, Declarant hereby declares that the Use and Occupancy Agreement recorded as Entry No. 3661095, Book 5355, Pages 1327 through 1357, is hereby rescinded and terminated in its entirety, and is hereby released and discharged as a lien on the Project and each of the Units by the filing of this Agreement; and

FURTHER, THEREFORE, pursuant to various provisions in the Declaration allowing for agreements between the owners of the Units, Declarant hereby declares that all of the Units in the Project, as described in Exhibit "B" attached hereto, shall be owned, held, sold, conveyed, transferred, leased, subleased, encumbered, and occupied subject to the following agreements, easements, covenants, conditions and restrictions which shall run with all of the Units, and every portion thereof, and which shall be binding upon all parties having any right, title or interest in the Project and in or to any and all Units, or any portion or share thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner of a Unit or any Share (as hereinafter defined) thereof:

1. Definitions. As used in this Agreement, the following terms shall have the following meanings:

1.01 "Articles" means the Articles of Incorporation of the Association which are, or shall be, filed in the Office of the Utah Secretary of State, as the same may be amended from time to time.

1.02 "Association" means The Kimball Condominiums Owners Association, a Utah non-profit corporation,

whose members consist of all owners of all Units, and all Shares therein, whether Owners or Unit Owners.

1.03 "Bylaws" means the Bylaws of the Association adopted by the Committee, as the same may be amended from time to time.

1.04 "Check-In-Time" and "Check-Out-Time" means the times designated as such in the then current Rules and Regulations.

1.05 "Committee" means the Management Committee of the Association as the same is more fully defined in the Declaration, and the Articles and Bylaws of the Association.

1.06 "Common Areas" means all portions of the Project other than (a) the interiors of the Units and (b) the Support Areas.

1.07 "Common Furnishings" means all furniture, furnishings, appliances, fixtures, equipment, telephone system, and all other personal property from time to time owned, leased or held for use by the Association, and which are located in or upon the Project.

1.08 "Declarant" means Bertagnole Properties, a Utah general partnership, or any successor-in-interest to the rights of Declarant hereunder by an instrument executed by Declarant and (a) recorded in the Office of the Salt Lake County Recorder, and (b) filed with the Secretary of the Association.

1.09 "Declaration" means the Second Amended Declaration of The Kimball Condominiums filed January 12, 1982 as Entry No. 3638967, Book 5330, Page 1324, Salt Lake County Recorder, and any amendments thereto.

1.10 "Exchange Program" means a service provided by an independent organization whereby Owners and owners of time periods in other projects at other locations may exchange Use Periods in the Project for time periods in such other projects.

1.11 "Exchange User" means an owner of a time period in another project who occupies a Unit and uses the Common Areas pursuant to an Exchange Program.

1.12 "Fiscal Year" means the one year period commencing on January 1st of each year, which shall be the fiscal year of the Association.

1.13 "Manager" means the agent engaged by the Committee pursuant to and in the manner provided in the Declaration and in Section 4.03 hereof.

1.14 "Mortgagee" means the beneficiary of a recorded deed of trust or the holder of a recorded mortgage encumbering any Share. "Mortgage" means a mortgage or deed of trust.

1.15 "Original Deed" means each deed from Declarant, its successors and assigns, first recorded after the date hereof which conveys a Share or Shares from Declarant to a buyer of a Share.

1.16 "Owner" means and includes (a) the grantee and grantees named in each Original Deed, (b) the Vendee or Vendees named in each Purchase Agreement, (c) the successor to each person described in clauses (a) and (b), and (d) Declarant with respect to any Share not subject to a Purchase Agreement or conveyed by Original Deed.

1.17 "Owner's Unit Type" means the Unit Type designated in the Original Deed naming such Owner, or his predecessor-in-interest, as the grantee.

1.18 "Permitted User" means any person, other than an Exchange User, who occupies a Unit in the Project by or under any Owner, including, but not limited to, members of such Owner's family, his guests, licensees or invitees.

1.19 "Project" means all of the Units and Common Areas defined in the Declaration, and all Shares therein.

1.20 "Purchase Agreement" means a purchase and sale agreement between Declarant and the person, firm or entity named therein as "Buyer", providing for the sale by Declarant, and the purchase by Buyer, of one or more Shares.

1.21 "Rules and Regulations" means the rules and regulations adopted and promulgated from time to time pursuant to Section 4.02(d) of this Agreement relating to the possession, use and enjoyment of the Project.

1.22 "Service Period" means, with respect to each Unit, a period of 14 nights and days, not necessarily consecutive, during each Use Year, reserved by the Association as a Service Period. The Association shall determine which days and nights will comprise the Service Period for each Unit, which determination may be changed from time to time.

1.23 "Share" means an undivided 1/50th interest in a Unit in The Kimball Condominiums, together with the right to use and occupy a Unit, the Common Areas and Common Furnishings, during a Use Period in accordance with this Agreement and the Rules and Regulations.

1.24 "Support Areas" means the following portions of the Project: Manager's Unit, service and maintenance area, registration desk area, mail room, office, laundry rooms, supply rooms and storage rooms.

1.25 "Unit" means each Unit of The Kimball Condominiums, pursuant to the Declaration referred to above.

1.26 "Unit Owner" means the owner (whether or not consisting of one or more persons or entities) of any Unit which is not subject to this Agreement because it has been withdrawn from the liens, restrictions, and rights of this Agreement pursuant to Section 8.04 below.

1.27 "Unit Type" means one of the three types of Units within the Project, being either:

(a) A Studio Unit having a sleeping capacity for two (2) persons; or

(b) A One Bedroom Unit having a sleeping capacity of four (4) persons.

(c) A Two Bedroom Unit having a sleeping capacity of six (6) persons, which Unit Type may be created by any combination of Studio Units and/or One Bedroom Units, where two bedroom units are combined by a common owner to constitute a case, such newly created larger unit shall continue to be conveyed and transferred by designating the Units which comprise it.)

Presently, the One Bedroom Units are Unit Nos. 105, 106, 113, 139, 143, 205, 206, 213, 239, 243, 305, 306, 313, 339, 343, 413, 439 and 443, and all other Units are Studio Units.

1.28 "Use Period" means the time period or periods during which an Owner has reserved the use of a Unit in accordance with the provisions of this Agreement and the Rules and Regulations.

1.29 "Use Year" means each one-year period commencing at Check-In-Time on January 1st of each calendar year; provided, however, that the Rules and Regulations may

designate another one-year period as constituting the Use Year; provided further, however, that the first Use Year of each Owner shall be the partial one-year period commencing on the date of acceptance by Declarant of the Purchase Agreement naming such Owner as vendee, or the date of recordation of the Original Deed naming such Owner as grantee, if such Owner is not a Vendee, and ending at Check-Out-Time on the last Friday of the current Use Year.

1.30 "Vendee" means the person, firm or entity named as "Buyer" in a Purchase Agreement accepted by Declarant.

2. Reservation Rights, Use Rights and Use Restrictions.

2.01 Reservation and Use Rights of Owners. Subject to all of the terms and conditions contained elsewhere in this Agreement, an Owner (including Declarant to the extent it owns unsold Shares) shall have the right, for each Share owned, to use and occupy a Unit, of his Owner's Unit Type, assigned to him by the Association, and the Common Furnishings contained within such Unit, and the non-exclusive right to use and enjoy the Common Areas, for seven (7) nights during each Use Year; provided, however, that such Owner or his Permitted User shall have reserved such use and occupancy in accordance with the requirements and procedures for the making of reservations set forth in the then current Rules and Regulations. No use or occupancy by any Owner will be permitted if such Owner is delinquent in the payment of any amounts owed to the Association at Check-In-Time at the commencement of his Use Period(s).

2.02 Occupancy. No Owner shall occupy a Unit, or exercise any other rights of ownership with respect to a Unit, other than the rights provided to him in this Section 2 during any time period other than his Use Period(s), unless expressly authorized by the Owner entitled to occupy the Unit during such time period. Each Owner shall keep the Unit occupied by him, and the Common Furnishings therein, in good condition and repair during his Use Period(s), vacate the Unit at the expiration of his Use Period(s), remove all persons and property therefrom, excluding only the Common Furnishings, leave the Unit and the Common Furnishings therein in good and sanitary condition and repair, and otherwise comply with such check-out and other procedures and regulations as may from time to time be contained in the Rules and Regulations. Any Owner may permit a Unit which he is entitled to occupy to be occupied by other persons (not in excess of the number of occupants permitted by this Agreement), for the purposes permitted by this Agreement, during his Use Period(s), but such Owner shall be

responsible for any loss, damage, destruction or violation of this Agreement or the Rules and Regulations (except on the part of an Exchange User) which occurs during such occupancy as if such Owner were occupying the Unit.

2.03 Failure to Vacate. If any Owner or any Permitted User fails to vacate a Unit at the end of his Use Period, or otherwise makes unauthorized use or occupancy of a Unit during a period other than his Use Period, or prevents another Owner, Permitted User or Exchange User (the "Detained Owner" or "Detained User") from using or occupying a Unit during such other Owner's Use Period, such Owner (the "Detaining Owner") and/or Permitted User (the "Detaining User") shall (a) be subject to immediate removal, eviction or ejection from the Unit wrongfully used or occupied; (b) be deemed to have waived any notice required by law with respect to any legal proceedings regarding removal, eviction or ejection (to the extent that such notices may be waived under Utah law); (c) reimburse the Association and the Detained Owner or Detained User for all costs and expenses incurred by him as a result of such conduct, including, but not limited to, costs of alternate accommodations, travel costs, court costs and reasonable attorneys' fees incurred in connection with removing, evicting or ejecting the Detaining Owner and/or Detaining User from such Unit, and costs (including reasonable attorneys' fees) incurred in collecting such reimbursement(s); and (d) pay to the Detained Owner and/or Detained User entitled to use and occupy the Unit during such wrongful occupancy, as liquidated damages (in addition to the costs and expenses set forth in Section 2.03(c) above), a sum equal to 200% of the fair rental value per day of the Unit for each day or portion thereof, including the day of surrender, during which the Detaining Owner and/or Detaining User prevents use and occupancy of the Unit; provided, however, that if the Detaining User is an Exchange User, the Owner whose Use Period was used by the Exchange User shall have no liability pursuant to the provisions of clauses (c) and (d) above. The Association shall be responsible for determining the "fair rental value" of a Unit. "Fair rental value" for a Unit shall be based upon the costs of renting comparable accommodations located in the vicinity of the Project. The Association shall use reasonable efforts to attempt to remove such Detaining Owner and/or Detaining User from the Unit, and/or to assist the Detained Owner or Detained User in finding alternate accommodations during such holdover period; to secure, at the expense of the Association, alternate accommodations for any Detained Owner or Detained User which alternate accommodations shall be as near in value to the Detained Owner's or Detained User's Unit as possible and the cost thereof shall be assessed to the Detaining Owner (unless the Detaining User was an Exchange User) as a "Personal Charge" (as hereinafter defined). In the event that the Association, in

its sole discretion, deems it necessary to contract for a period greater than the actual period for which the use is prevented in order to secure alternate accommodations as set forth above, the cost of the entire period shall be assessed to the Detaining Owner as a Personal Charge.

By accepting any conveyance of a Share, each Owner agrees that, in the event of a wrongful occupancy or use by him or any Permitted User, damages would be impracticable or extremely difficult to ascertain and that the measure of liquidated damages provided for herein constitutes fair compensation to those who are deprived of occupancy. If an Owner or his Permitted User by intentional or negligent act renders a Unit uninhabitable for the successive User Period(s), then (i) such Owner shall be deemed a Detaining Owner, (ii) the foregoing provisions of this Section 2.03 shall apply, and (iii) such Owner shall be liable to the Owner(s) and/or Permitted User(s) of successive Use Period(s) just as if such Owner had refused to vacate the Unit at the end of his Use Period(s). For the purpose of this Section 2.03, the act or negligence of a Permitted User shall be deemed to be the act of the Owner.

2.04 Use Restrictions. Notwithstanding anything in the Declaration to the contrary, except as required to prevent damage or injury to persons or property in an emergency, no Owner shall make or authorize any alterations, additions or improvements to a Unit or its Common Furnishings, paint, repaint, tile, paper or otherwise refinish or redecorate the inner surfaces of the walls, ceilings, floors, windows or doors bounding any Unit, which such Owner may from time to time occupy, or remove, alter or replace any portion of the Common Furnishings, without the prior written consent of the Association. The right to perform all of the foregoing acts has been, and is hereby, delegated to the Association by this Agreement. The foregoing prohibitions, however, shall not modify or affect the obligation of each Owner for the prudent care or ordinary maintenance and upkeep of all property subject to his use. No animals shall be allowed to enter or be kept in or upon any Unit or any of the common areas for any length of time whatsoever.

2.05 Easement for Sales, Resales, Customer Service and Related Purposes. Declarant, on behalf of itself, its successors and assigns, and its respective agents, employees, contractors, subcontractors, invitees, and other authorized personnel, shall have, for a period of ten (10) years from the date of this Agreement, an exclusive easement in, over and through the Units, the Common Areas and the Support Areas, for the purposes of (1) marketing and selling the Shares and Units; (2) maintaining customer relations and providing post-sale services to Owners; (3) displaying signs



and erecting, maintaining and operating, for sales and administrative purposes, model Units and a customer relations, customer service and sales office complex in the Project; and (4) showing the Units and Common Areas and arranging for the use of any recreational facilities within the Common Areas by prospective purchasers. The use of such easement shall not interfere with or diminish the rights of Owners to use quietly, occupy and enjoy the Units in accordance with this Agreement and the Rules and Regulations, nor interfere with the Association's use of the Support Areas as necessary to perform its duties and obligations pursuant to the Declaration, this Agreement, and the Rules and Regulations.

#### 2.06 Rental of Units.

(a) Except for all Units and Shares owned by Declarant, the Association shall, during all times not included in any Use Period of a Unit, have the exclusive right to occupy the Unit and to rent said Unit to the general public. Any rentals received by the Association shall inure to the benefit of the Association and its members, and shall be applied as an offset against the expenses of the Association. Any rental funds in excess of expenses shall be held in reserve to pay future Association expenses. No Owner shall be entitled to any rentals received by the Association regardless of the fact that an Owner does not use his Share during a Use Year. In no event shall any rental be made by Declarant or the Association for the account of any individual Owner.

(b) Notwithstanding the foregoing provisions of this Section 2.06, in the event Declarant (a) becomes in excess of sixty (60) days delinquent with respect to any Assessment or subsidy agreement payment owed by it under the provisions of this Agreement and (b) thereafter fails to pay any such delinquent Assessment or subsidy agreement payment within ten (10) business days following receipt from the Association of written notice to pay, the Association shall thereafter, and until all delinquent Assessments owed are paid in full, have the right during all times not included in any Use Period, to rent the Units owned by Declarant to the general public, and to retain all rental proceeds for its own use. No rental (whether by Declarant, any Owner, or the Association) shall interfere with or diminish the rights of all other Owners to use and occupy Units in accordance with this Agreement and the Rules and Regulations. The cost of repair or replacement incurred by reason of damage or destruction of a Unit and/or the Common Furnishings therein, which damage or destruction occurs during the rental of such Unit pursuant to this Section 2.06, shall be borne by the Declarant or the Owner renting said Unit.

(c) Declarant shall have the right, as shall all Owners, to rent the Shares it owns. In addition, as long as Declarant owns one-third (1/3) or more of the Shares in the Project, Declarant, on behalf of itself, its successors and assigns, and its agents, employees, contractors, subcontractors and other authorized personnel, shall have an exclusive easement in gross in, over and through the Support Areas for the purpose of conducting rental activities under this Section 2.06(c).

2.07 Unit Types. As described in Section 2.01, each Owner has the right to the use of his Unit Type, which as defined in Section 1.27, may be a studio, or a one or two bedroom, Unit. Further, as described in Section 1.27, there presently are 18 one bedroom Units and 135 Studio Units in the Project. However, Declarant reserves the right to combine contiguous Studio and/or one bedroom Units for the purpose of creating two bedroom Units or additional one bedroom Units, as long as Declarant owns all Shares in the Units combined at the time of combination. Thus, in buying one of the three Unit types, no Owner is assured as to how many Units of his type will exist at the time the Project is sold out, but whatever number of his type does exist, that will be the number available for use by this Owner during his Use Period. In addition, the Owner of a two bedroom Unit Type may use a studio or one bedroom Unit, and the Owner of a one bedroom Unit Type may use a Studio Unit, subject to the availability of the various Unit Types. The Owner of a smaller Unit Type, however, shall have no right to use a larger Unit Type.

2.08 Use of Support Areas by the Association. Except as provided in Sections 2.05 and 2.06 above, the Association shall have the full and complete use of the Support Areas and shall be responsible for maintaining the same in good condition and repair.

2.09 Transfer of Interest. No Owner shall sell, convey, hypothecate or encumber less than all of his interest in any Share he owns. Any sale, conveyance, hypothecation or encumbrance by any Owner of less than all of his interest in a Share shall be null, void and of no effect. The transfer of any Share shall operate to transfer to the new owner of the Share the interest of the prior Share Owner in all funds in the hands of the Association even though not expressly mentioned or described in the instrument of transfer and without further instrument of transfer.

2.10 Separate Mortgages. Each Owner shall have the right to mortgage or otherwise encumber all, but not less than all, of his Share. Any Mortgage shall be subordinate to all of the provisions of this Agreement, and in the event of

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foreclosure, the provisions of this Agreement shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, assignment in lieu of foreclosure, or otherwise.

2.11 Partition and Subordination of Tenancy-in-Common Attributes.

(a) It is intended that this Agreement alone shall govern all rights with respect to the use, possession, enjoyment, management and disposition of the Shares originally conveyed by deed. Accordingly, all rights with respect to the use, possession, enjoyment, management or disposition of a Share originally conveyed by deed which an Owner might otherwise have as a joint tenant or tenant-in-common (including but not limited to any common law or statutory right jointly to use, possess, manage, or partition commonly owned property) are hereby unconditionally and irrevocably subordinated to this Agreement for so long as this Agreement shall remain in effect; provided, however, that in the event that an election to terminate this Agreement is made pursuant to Section 8.02, an Owner shall have the rights specified in Section 8.02.

(b) Except as provided in Section 2.10(a) above and Section 8.02 below, no Owner or other person or entity acquiring any right, lien or interest in any of the Project shall seek or obtain, through any legal procedures, judicial partition of the Project or the sale thereof in lieu of partition. If, however, any Share is owned by two or more persons as tenants-in-common, joint tenants or community property, nothing herein contained shall prohibit a judicial sale of the Share in lieu of partition as between such co-tenants or joint tenants.

2.12 Protection of Interest. Except as provided in Section 2.09, no Owner shall permit his Share to be subject to any lien (other than the liens of current real property taxes), claim or charge, the enforcement of which may result in a sale or threatened sale of the Share of any other Owner or any part thereof or in any interference in the use or enjoyment thereof by any other Owner. In the event of a threatened sale of the Share of any Owner, or should the use and enjoyment of any portion thereof by any Owner be threatened by reason of any lien, claim or charge against the Share of any other Owner, or should proceedings be instituted to effect any such sale or interference, any Owner, acting on his own behalf or through the Association, or the Association acting on behalf of any one or more Owners (if promptly indemnified to his or its satisfaction) may, but shall not be required to, pay or compromise the lien, claim or charge without inquiry into the

proper amount or validity thereof and, in such event, the Owner whose interest was subjected to such lien, claim or charge shall forthwith pay the amount so paid or expended to the Owner or the Association, who shall have paid or compromised the lien, claim or charge, together with such reasonable attorneys' fees and related costs as he or it may have incurred. No Owner shall permit his interest in any funds from time to time in possession of the Association to be subjected to any attachment, lien, claim or charge or other legal process and each Owner shall promptly restore any funds held by the Association in respect of his Share to the extent depleted by the reason or the assertion of any such attachment, lien, claim, charge or other legal process and shall reimburse the Association for all reasonable attorneys' fees or other costs incurred in respect thereof.

2.13 Parking. The parking spaces located within and appurtenant to the Project (as set forth in the Record of Survey Map), and any additional parking leased by the Association or Declarant, shall be available for use by all Owners during their Use Period only, on a non-reserved basis. In no event shall any Owner or Permitted User of a Share, or any person leasing a Unit, be entitled to more than one parking space during his Use Period. If the Association determines, or a governmental entity mandates, that additional parking space is needed, then the Association shall contract for the same to the extent it can, at reasonable rates, in the neighborhood surrounding the Project.

### 3. The Association.

3.01 Association. The Association has been created and its operations, powers and duties defined by the Articles, the Declaration, and the Bylaws. The provisions of this Section 3, and other provisions of this Agreement, where applicable, shall more specifically define the role, duties, rights and operations of the Association in light of the scheme of fractional ownership and time-share use of the Units created by this Agreement. To the extent any provision hereof is inconsistent with the provisions of the Declaration, Articles, and Bylaws, with respect to the Association and its rights, duties and operations, this Agreement shall be controlling.

3.02 Membership in Association. Each Owner (including Declarant as to all Shares not conveyed by Declarant to third-parties) shall be a member of the Association and shall remain a member thereof until he ceases to be an Owner.

3.03 Transfer of Membership. The membership of each Owner in the Association is appurtenant to and inseparable

from his ownership of a Share and shall be automatically transferred upon any authorized transfer or conveyance of the ownership of his Share to any transferee or grantee and, except as provided herein, said membership shall be non-transferable whether by gift, bequest, assignment or otherwise.

3.04 Voting. In accordance with the provisions of the Declaration (Paragraph 10) and the Bylaws, each Owner (including Declarant as to the Shares it owns) shall be entitled to a vote for each Share he owns equal to 1/50th of the Unit's vote as defined in Paragraph 10 of the Declaration. However, notwithstanding any provision to the contrary in this Agreement, the Declaration, Bylaws or Articles, Declarant shall have a vote for each Share owned by Declarant equal to two (2) times the vote otherwise attributable to that Share under the provisions of the preceding sentence, until Declarant owns less than one-third (33 1/3%) of all Shares in the Project, at which time Declarant's vote for each Share it owns shall be calculated in the same manner as for all Owners.

3.05 Management Committee. The Committee shall initially consist of the persons appointed by Declarant, and shall thereafter be elected in accordance with the provisions of the Declaration.

#### 4. Management.

4.01 Powers and Duties Generally. Administration of the program as set forth in this Agreement, and the operation, maintenance, repair and restoration of the Units and Common Areas and the Common Furnishings, and any alterations and additions thereto, shall be vested in the Association. The Association, acting alone (through its Committee, its officers, or other duly authorized representatives) may, subject to the provisions of the Articles, the Bylaws, the Declaration, and this Agreement, exercise any and all rights and powers herein and therein enumerated and, except as specifically limited herein, all the rights and powers of a non-profit corporation under the laws of the State of Utah.

4.02 Specific Powers and Duties of the Association. The management and operation of the Project, the maintenance and repair of the Project, the acquisition (by purchase or lease), maintenance, repair and replacement of the Common Furnishings and the administration of the affairs of Owners, the use and occupancy of the Units and payment, as agent, of expenses and costs enumerated in this Agreement shall be under the direction and control of the Association. The Association shall have the duty to maintain and repair the Project, to acquire (by lease or purchase), maintain, repair and replace Common Furnishings as needed, to administer the operation as

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provided herein and to levy, collect and enforce the "Assessments" (as hereinafter defined) enumerated in this Agreement. The Association shall have the exclusive possession of each Unit during the Service Periods for the performance of maintenance and repairs on such Unit. the Association shall annually compile a roster of the names and addresses of each of the Owners (the "Roster") and may charge each Owner a reasonable fee for a copy thereof. Upon the written request of an Owner, the Association shall furnish such Owner with a copy of the Roster. Each Owner who requests and receives a copy of the Roster hereby agrees that he will not make any commercial use of the same and will not distribute a copy of the Roster to any person who is not an Owner. The Association shall have the power to do all things that are required to be done by it pursuant to this Agreement. Without limitation of the foregoing powers and duties, the Association is expressly authorized in its discretion and on behalf of the Owners to do any or all of the following:

(a) Maintenance and Repair. To repair, maintain, repaint, furnish and refurnish the Project, or any part thereof, to establish reserves for anticipated costs, including the costs of acquisition and replacement of Common Furnishings, and to acquire and pay for materials, supplies, furniture, furnishings, labor or services which the Association deems necessary or proper for the operation, maintenance and repair of the Project, and the Common Furnishings.

(b) Taxes and Assessments. As agent and not as principal, to pay all taxes and assessments, and other costs affecting or relating to the Project or the Common Furnishings, and to discharge, contest or protest liens or charges affecting the Project.

(c) Utilities. To obtain and pay the costs of electrical, telephone, gas and other utility services for the Project.

(d) Rules and Regulations. To adopt, publish and enforce, from time to time, Rules and Regulations relating to the possession, use and enjoyment of the Project, which Rules and Regulations shall be consistent with the provisions of this Agreement.

(e) Legal and Accounting. To obtain and pay the cost of legal and accounting services necessary or proper in the operation, maintenance and repair of the Project and the enforcement of this Agreement, the Bylaws and the Rules and Regulations.

(f) Insurance. To obtain and pay the cost of (i) insurance covering the Project and the Common Furnishings therein against loss or damage by fire and other hazards customarily covered by homeowner's insurance policies written with extended coverage; (ii) public liability insurance, insuring against liability for personal injury or property damage resulting from an occurrence in, on or about the Project; and (iii) any other insurance, including, but not limited to, Workers' Compensation Insurance, deemed necessary or desirable by the Association. The policies of insurance shall cover such risks, be written by such insurers, and be in such amounts as the Association shall deem proper under the circumstances. The Association shall cause the Manager and any employee of either the Manager or the Association who has charge of the Owners' funds to be bonded.

(g) Levy and Collection of Assessments. To levy, collect and enforce Assessments against the Owners in the manner provided in Sections 5 and 6 hereof in order to pay the expenses of the operations of the Project, including the fee of the Manager; and to do all things necessary to enforce each Owner's obligations hereunder.

(h) Financial Statements and Audit. To cause to be regularly prepared financial statements for the Association and copies thereof distributed to all members. Specifically, an annual report shall be distributed, within 120 days after the end of each Fiscal Year, consisting of the following: (a) a balance sheet as of the last day of each Fiscal Year, and (b) an operating statement for such Fiscal Year. If the annual report is not prepared by an independent accountant, the annual report shall be accompanied by the certificate of an authorized officer of the Association that the statements were prepared without audit from the books and records of the Association.

(i) Bank Accounts. To deposit (a) all funds collected from Owners pursuant to Section 5 hereof and Section 2.03, and (b) all other amounts collected by the Association in connection with its rights and duties provided herein in a separate account or accounts with a bank, savings and loan association, thrift and loan, money market funds or ready asset funds selected by the Association. Funds deposited in such accounts may be used by the Association only for the purposes for which such funds have been collected. To the extent that such funds are not needed for current expenses, they may be deposited in interest-bearing accounts, certificates or Treasury Bills.

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(j) Statements of Status. Upon the request of any Owner, Mortgagee, prospective Mortgagee, purchaser or other prospective transferee of a Share, to issue a written statement setting forth any amounts unpaid with respect to the Share, the use entitlement for the remainder of the Use Year and the reservation status respecting such Share. Such statement, for which a reasonable fee may be charged, shall be binding upon the Association in favor of any person who may rely thereon in good faith.

(k) Cleaning and Maid Service. To provide for cleaning and maid service upon the departure of each Owner or other occupant of the Unit and during Service Periods so that the Units are maintained in good order and repair. In addition to cleaning and maid service that is normally provided in each Unit, to provide such additional cleaning and maid services as shall reasonably be requested by an Owner for such additional fees as may be established by the Association.

(l) Right of Entry. During Service Periods and at any other reasonable time, upon giving reasonable notice if a Unit is occupied, to enter the Unit for the purpose of cleaning, maid service, painting, maintenance and repair, and to enter upon and within any Unit, at any reasonable time, whether or not during a Service Period and whether or not in the presence of an Owner, for the purpose of (i) making emergency repairs therein, (ii) abating any nuisance or any dangerous, unauthorized, prohibited or unlawful activity being conducted or maintained in such Unit, (iii) protecting property rights and welfare of the other Owners, or (iv) for any other purpose reasonably related to the performance by the Association of its responsibilities under the terms of this Agreement. Such right of entry shall be exercised in such a manner as to avoid any unreasonable or unnecessary interference with the possession, use and/or enjoyment of the Owner, his Permitted User or other occupant of such Unit and shall be preceded by reasonable notice to the Owner or occupant thereof whenever the circumstances permit.

(m) Other Necessary Acts. To do all other things or acts deemed by the Association to be necessary, desirable or appropriate for the operation and maintenance of the Project.

(n) Delegation. To delegate the authority and responsibilities of the Association hereunder to one or more agents, including without limitation, the Manager provided for in Section 4.03 below.



4.03 Authority and Duty to Engage Manager. The Association shall have the authority to engage, and the obligation to use its best efforts to engage and maintain, a reputable entity as the Manager for the Project pursuant to a written agreement (the "Management Agreement") meeting the requirements of this Section 4.03. Each Management Agreement shall:

(a) Authorize and obligate the Manager to perform all the duties and obligations of the Association specified in Section 4.02 above; provided, however, that the Manager may delegate its authority and responsibilities to one or more sub-agents for such periods and upon such terms as the Manager deems proper, subject to the limitations set forth in Section 4.04 below.

(b) Provide for a term of not more than three (3) years, except that the Management Agreement may provide that the term will be automatically renewed for successive three-year terms unless notice of non-renewal is given no later than ninety (90) days prior to the end of any three-year term by either party. The Management Agreement shall be subject to termination by the Association as follows:

(i) At any time, for cause.

(ii) At any time with 90 days notice, upon the request to do so by the Committee or the vote or written request of two-thirds (2/3) of the members of the Association.

(c) Provide that the Manager may resign only upon giving at least sixty (60) days prior written notice to the Association. On or before the effective date of the Manager's resignation, the Manager shall turn over to the Committee all books and records relating to the management and operation of the Project. The first Manager shall be appointed by Declarant and may be Declarant or an affiliate of Declarant.

4.04 Limitation on Powers of the Association and the Manager.

(a) Notwithstanding the powers of the Association as set forth in Sections 4.01 and 4.02, neither the Association (nor the Manager as the delegee of the Association's powers and duties) shall enter into a contract with a third-person or entity whereby such person or entity will furnish goods or services to the Project for a term longer than one year unless authorized by the vote or written consent of a majority of the members of the Association, except for:

(i) The Management Agreement.

(ii) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Service Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.

(iii) Prepaid casualty and/or liability insurance policies not to exceed three (3) years duration provided that each policy permits short-rate cancellation by the insured.

(iv) A lease of Common Furnishings.

(b) The Association shall not contract for any services or goods wherein it is or will be paying more than the fair market value for said services or goods. The Association may contract with Declarant, the Marketing Entity, or any entity related to the same, to obtain services or goods, as long as said contract or contracts are reasonable and at fair market values.

4.05 Limited Liability. Neither the Association nor the Manager shall be responsible for the acts, omissions or conduct of any of the Owners or for the breach of any of the obligations of any of the Owners.

## 5. Assessments.

5.01 Creation of Personal Obligations for Assessments. Declarant, for each Share owned by it, hereby covenants, and each other Owner of a Share, whether or not it shall be so expressed in the Original Deed or any other conveyance instrument, shall be deemed to have covenanted and agreed, for each Share owned, to pay to the Association the Basic Assessment, all Special Assessments, and any Personal Charges, as hereinafter described in Sections 5.03, 5.05, 5.07 and 5.08 (all of which are sometimes herein individually and collectively referred to as "Assessment(s)"), which shall be established, made and collected as hereinafter provided. Declarant may, in lieu of payment of the Basic Assessment, enter into a subsidy agreement with the Association pursuant to which Declarant agrees to pay to the Association the difference between the actual costs incurred by the Association and the Assessments paid or payable by Share Owners. The Assessments, together with interest, costs and reasonable attorney's fees shall be the personal obligation of each Owner at the time the Assessment becomes due and payable and shall be a lien and charge upon the Share against which the Assessment is made. The recording of this Agreement shall be deemed to establish

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the lien for all assessments and charges assessed or to be assessed to all Owners against their Shares. In addition, the Association may record Notices of Lien, executed by the Committee (by one of its officers), with respect to assessments and charges not paid by Owners when due, as provided in Section 6.02(b). Such lien shall constitute a first lien on the Share so liened, regardless of the recording dates of other encumbrances against the same Share, and said lien shall not be affected by the foreclosure of any other lien on a Share. The personal obligation for delinquent Assessments shall not pass to successors-in-title unless expressly assumed by them, but it shall remain a lien on the Share until paid. No Owner may waive or otherwise avoid liability for the Assessments by non-use of his Share or any part thereof or any abandonment thereof.

5.02 Purpose of Assessments. Assessments shall be used exclusively to promote the recreation, health, safety and welfare of the Owners, the operation, maintenance and improvement of the Project, to pay for the administration of the Share operation and reimbursement of expenses incurred by the Association and other expenditures incurred in the performance of the duties of the Association as set forth in this Agreement.

5.03 Additional Definitions Related to Assessments. As used herein, "Basic Expenses" means the estimated aggregate amount of expenses to be incurred by the Association during the applicable Fiscal Year (i) to operate, manage, maintain, improve and repair the Project, including the Units, the Common Areas and the Common Furnishings, and to administer the Share operation; (ii) to provide for reserves to ensure payment when due of the cost of capital expenditures relating to the repair or restoration of the Units, the Common Areas, and the repair and replacement of Common Furnishings, and for such other purposes as are required by good business practice (the "Reserve Expenses"); (iii) to provide for a fund to account for the possibility that some Assessments may not be paid on a current basis, and (iv) to provide for the payment of the fee of the Manager. Without limiting the generality of the foregoing, Basic Expenses shall include: all charges, costs, and expenses whatsoever incurred by the Association for or in connection with the administration and operation of the Units; real property taxes and other taxes assessed against the property, or the Common Furnishings or any other interests of the Owners (to the extent that such taxes are separately assessed to the individual Owners, such Owners shall direct the County Assessor and Treasurer to send all assessments and notices to the Association and such taxes and assessments shall be paid by the Association as part of the Basic Expenses); assessments and other similar governmental charges levied on or

attributable to the Project, including, without limitation, any room or any governmental charge levied in lieu thereof; insurance, including fire and other casualty and liability insurance, obtained pursuant to this Agreement, the Declaration and the Bylaws; any liability whatsoever for loss or damage arising out of or in connection with the Project, or any fire, accident, or nuisance therein; cost of repair, reinstatement, rebuilding and replacement of the Project, or the Common Furnishings therein; the cost of all basic utility services, including water, electricity, garbage disposal, telephone and any other similar service attributable to the Units and the Common Areas; the unpaid share of any Assessment levied during the previous Fiscal Year against any Owner who has defaulted in payment thereof to the extent that the same becomes uncollectable; wages, accounting and legal fees, management fees, maid service, and cleaning fees, and other necessary expenses of upkeep, maintenance, management and operation actually incurred with respect to the Project. Basic Expenses shall not include any expense constituting a Personal Charge.

5.04 Increase and Reduction of Budget. In the event it shall be determined that the budget of the Association (which the Committee shall cause to be prepared each Fiscal Year) is or will be inadequate to meet all expenses incurred by the Association for such Fiscal Year, the Committee shall have the authority levy, pursuant to the formulae hereinafter set forth, against each Owner, a supplemental assessment in an amount sufficient to provide for such inadequacy. Each Owner hereby further agrees that in the event the Committee shall determine at any time during any Fiscal Year that the budget is, or will be, in excess of the amounts needed to meet the Basic Expenses (other than Reserve Expenses) for such Fiscal Year, the Committee shall have the authority, exercisable in its sole discretion, to cause to be prepared an estimate of the amount of such excess, which excess shall then be subtracted from the previously prepared budget for the Fiscal Year to which such excess is applicable. The Basic Expenses reflected in the reduced total budget shall then be allocated among the Owners as provided in Section 5.05 below. No Owner shall, by reason of such reduction, be entitled to a refund of all or any portion of any Basic Assessment previously paid. Each Owner hereby agrees that any amount assessed and collected in excess of the amount required to meet the Basic Expenses (other than Reserve Expenses) shall be applied to reduce the amount assessed to meet the Basic Expenses for the next succeeding Fiscal Year. Any reduction in the budget, as provided herein, shall not relieve any Owner from his obligation to pay any past-due Basic Assessment.

5.05 Basic Assessment. Each Fiscal Year the Basic Assessment to each Owner for each Share owned shall be

determined by multiplying the Basic Expenses attributable to such Fiscal Year by the undivided interest in the common areas and facilities appurtenant to the Unit in which the Owner acquired an interest, divided by 50; provided, however, that the initial Basic Assessment for each Share shall be adjusted according to the following formula: the Basic Assessment as calculated pursuant to the formula set forth in the first sentence of this Section 5.05 shall be multiplied by a fraction (i) the numerator of which shall be the number of days remaining in the current Fiscal Year commencing on the date on which the Owner executed his Purchase Agreement or on the date of recordation of the Owner's Original Deed and (ii) the denominator of which is 365.

5.06 Payment of Basic Assessment. The Basic Assessment shall be paid as follows:

(a) For each Fiscal Year or part thereof the Basic Assessment shall be payable by Owners in one lump sum due on or before the date determined by the Association or, if the Association shall elect, in periodic installments payable not more frequently than monthly.

(b) For each Fiscal Year in which there is no subsidy agreement between Declarant and the Association, Declarant may pay its Basic Assessment to the Association in twelve (12) equal monthly installments, commencing on January 1st of each Fiscal Year and continuing on the first day of each month thereafter until paid.

(c) That portion of the Basic Assessment which is attributable to Reserve Expenses shall be deposited in a separate Reserve Account as set forth in Section 4.02(i).

5.07 Special Assessments. If the Basic Assessment with respect to any Share is, or will become, inadequate to meet all expenses incurred by the Association hereunder (other than for items constituting Personal Charges) for any reason, including nonpayment by any Owner of Assessments on a current basis, the Association shall immediately determine the approximate amount of such inadequacy, prepare and distribute a supplemental budget and levy against each Owner a special assessment according to the formula in Section 5.05 (the "Special Assessment") in an amount sufficient to provide for such inadequacy; provided, however, that without the vote or written assent of a majority of members of the Association, Special Assessments shall not, in the aggregate, exceed ten percent (10%) of Basic Expenses for the applicable Fiscal Year. Any Special Assessment shall be payable in one lump sum or periodically, as determined by the Association, and shall be

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payable within fifteen (15) days after receipt of a statement therefor.

5.08 Personal Charges. The term "Personal Charges" means any expense resulting from the act or omission of any Owner, Permitted User or Exchange User, including, without limitation: the cost of long distance telephone charges or telephone message unit charges, any optional maid service and other special services or supplies attributable to the occupancy of the Unit during such Owner's Use Period; the cost to repair any damage to the Unit, to repair or replace any Common Furnishings located therein or the Common Areas on account of loss or damage occurring during such Owner's Use Period; and the cost to satisfy any expense to any other Owner(s) or to the Association due to any intentional or negligent act or omission of such Owner, Permitted User or Exchange User, or resulting from the breach by such Owner, Permitted User or Exchange User of any provisions of this Agreement, the Declaration, the Bylaws or the Rules and Regulations. For purposes of this Section 5.08, the act or negligence of a Permitted User shall be deemed to be the act of the Owner. Such Personal Charges shall be paid by each Owner as follows:

(a) If the Association is able to determine the amount of Personal Charges at Check-Out-Time (for example, Personal Charges constituting long distance telephone charges, optional maid services, etc.) such Personal Charges shall be payable at the termination of the Owner's Use Period.

(b) Personal Charges which are not ascertainable as provided in Section 5.08(a) above, shall be payable within thirty (30) days after receipt of a statement therefor.

(c) All Personal Charges not paid when due, together with interest, costs and attorney's fees, shall be a lien and charge against the Share of the Owner along with any assessments.

5.09 Expenses During Start-Up. Notwithstanding anything in this Section 5 to the contrary, until Declarant, its successors and assigns, own less than one-third (1/3) of the Units, the Basic Expenses shall be shared between Declarant and the other Owners, as follows:

(a) With respect to fixed costs and expenses, the same shall be divided among Declarant and all Owners based on the percentage each owns in the Common Areas of the Project, except that until the South Building (as shown on the Record of Survey Map) is constructed, all Units located

therein shall not be included in prorating any assessments, and therefore, the total interest in the Common Areas of all Units in the North Building shall constitute the total interests in the Project for the purpose of making assessments. Fixed costs shall include real property taxes, insurance, and all costs which do not vary or fluctuate with the number of Shares sold and with the use of the Project.

(b) With respect to variable costs and expenses, the same shall be divided between all Owners and Declarant based on the percentage ownership of each in the Common Areas of the Project, but for purposes of this Section 5.09(b) Declarant shall be deemed to own only the unsold Shares existing in Units in which at least one Share has been sold to a third party (i.e., a party other than Declarant, its successors and assigns). Variable costs and expenses shall include maid service, costs of employees, costs of cleaning, maintaining and repairing the Units, utilities expenses, and all other costs and expenses which vary and fluctuate with the number of Shares sold and with the use of the Project.

#### 6. Enforcement of Restrictions.

6.01 In General. In the event that any Owner or his Permitted User(s) fails to comply with any of the provisions of this Agreement, the Declaration, the Bylaws, and the Rules and Regulations, the Association or any other Owner(s) shall have full power and authority to enforce compliance in any manner provided for herein, by law or in equity, including without limitation, the right to bring an action for damages, an action to enjoin the violation or specifically enforce the provisions of this Agreement, the Declaration, the Bylaws, and the Rules and Regulations, to enforce the liens provided for therein and any statutory lien provided by law, including the foreclosure of any such lien and the appointment of a receiver for an Owner and the right to take possession of the Share of any Owner in any lawful manner. In the event the Association or any Owner(s) shall employ an attorney to enforce the provisions of this Agreement, the Declaration, the Bylaws, or the Rules and Regulations against any Owner, the party engaging the attorney shall be entitled to recover from the Owner violating any such provisions reasonable attorney's fees and costs in addition to any other amounts due as provided for herein. All sums payable hereunder by an Owner shall bear interest at eighteen percent (18%) per annum from the due date, or if advanced or incurred by the Association, or any other Owner, pursuant to authorization contained in this Agreement, commencing ten (10) days after repayment is requested. All enforcement powers of the Association shall be cumulative. Each Owner, by accepting the conveyance of a Share, shall be deemed to have covenanted and agreed that the Association shall have all of the rights, powers and remedies set forth in this Section 6 and elsewhere in this Agreement.

6.02 Certain Specific Enforcement Powers. In amplification of, and not in limitation of, the general powers specified in Section 6.01 above, the Association shall have the following rights and powers:

(a) Suspension of Privileges. If any Owner or his Permitted User shall be in breach of this Agreement, the Declaration, the Bylaws, or the Rules and Regulations, subject to the limitations hereinafter set forth in this Section 6.02(a), the Association may suspend the right of such Owner and his Permitted User(s) to reserve and/or occupy any Unit and the right of such Owner to participate in any vote or other determination provided for herein. No such suspension, except for the failure of such Owner to pay any Assessment or other amount(s) owed to the Association on or before the due date therefor, shall be made except after a meeting of the Committee at which a quorum is present, duly called and held for such purpose in the same manner as provided in the Bylaws for the noticing, calling and holding of a meeting of the Committee. Written notice of such meeting and the purpose thereof, including the reasons for the suspension sought, shall be given to the Owner whose privileges are sought to be suspended at least ten (10) days prior to the holding of such meeting. Such notice shall be given as provided in Section 8.04 below. Such Owner shall be entitled to appear at such meeting and present his case as to why his privileges should not be suspended. The decision as to whether such privileges should be suspended shall be made by a majority of the members of the Committee present at such meeting. Written notice of suspension, the reasons therefor and the length thereof shall be given to the suspended Owner and the suspension shall become effective on the date such notice is given but not earlier than the fifth day following the date of such decision. If such suspension of privileges is based on the failure of an Owner to pay Assessments or any other amount(s) due hereunder when due, the suspended privileges of such Owner shall be reinstated automatically at such time as the Owner shall have paid to the Association, in cash or by cashier's or certified check, all amounts past-due as of the date of such reinstatement. If such suspension of privileges is based on any act or omission other than the failure of an Owner to pay Assessments or any other amount(s) due hereunder when due, the suspended privileges shall be automatically reinstated upon the expiration of the suspension period stated in the suspension notice.

(b) Enforcement by Lien. As provided in Section 5.01, there is hereby created a lien, with power of sale, on each and every Share, to secure the prompt and faithful performance of each Owner's obligations under this Agreement, the Declaration, the Bylaws and the Rules and Regulations and the payment to the Association of any and all Assessments



levied against any and all Shares under this Agreement, together with interest thereon at eighteen percent (18%) per annum from the date of delinquency, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorney's fees. At any time after the occurrence of any default in the payment of such Assessment or performance secured, the Association or any authorized representative may file and record a Notice of Lien (with a copy to the Mortgagee of such defaulting Owner if such Mortgagee has requested a copy and furnished its name and address to the Association), on behalf of the Association, against the Share of the defaulting Owner, in the Office of the County Recorder of Salt Lake County. Such Notice of Lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:

- (i) The name of the defaulting Owner;
- (ii) The total amount of the delinquency, interest thereon, collection costs and reasonable attorney's fees;
- (iii) That the Notice of Lien is made by the Association pursuant to this Agreement; and
- (iv) That a lien is claimed and will be foreclosed against the Share in an amount equal to the amount stated.

Upon such recordation of a duly executed original or copy of such a Notice of Lien, and mailing a copy thereof to the defaulting Owner, the lien claimed therein shall immediately attach and become effective. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a deed of trust by exercise of a power of sale contained therein. The Association shall have the power to bid in at any foreclosure sale or trustee's sale and to purchase, acquire, lease, hold, mortgage and convey any Share acquired at such sale, subject to the provisions of this Agreement. Reasonable attorney's fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law.

The proceeds of any foreclosure or trustee's sale provided for in this Agreement shall first be paid to discharge court costs, reasonable attorney's fees, title costs and costs of the sale, and all other expenses of the proceedings and sale, and the balance of the proceeds, after satisfaction of such charges and unpaid Assessments hereunder or any liens, shall be paid to the defaulting Owner. The purchaser at any such sale shall obtain title to the Share free from the sums or

performance claimed (except as stated in this subparagraph) but otherwise subject to the provisions of this Agreement, the Declaration, the Bylaws, and the Rules and Regulations; and no such sale or transfer shall relieve such Share or the purchaser thereof from liability for any Assessments, other payments or performance thereafter becoming due or from the lien therefor as provided for in this subparagraph. All sums assessed hereunder but still unpaid shall remain the obligation of and shall be payable by the person foreclosed upon, but if such sum should prove uncollectable, then it shall be deemed to be a Basic Expense, collectable from all of the other Owners, including the purchaser thereof at foreclosure, and shall be shared among such Owners in the same manner as other Basic Expenses are shared.

Upon the timely curing of any default for which a Notice of Lien was filed by the Association, the officers of the Association are hereby authorized to record an appropriate release of such lien in the Office of the Salt Lake County Recorder.

6.03 Priority of Lien. The lien provided for herein shall be prior to all encumbrances made by an Owner or imposed by legal process upon any Owner except taxes, bonds, assessments and other levies, which by law, are prior thereto, whether the Notice of Lien is recorded prior or subsequent to any such encumbrances. The sale or transfer of any Share shall not defeat or affect the lien provided for herein.

## 7. Damage, Destruction and Condemnation.

7.01 In General. In the event of any damage or destruction, whether resulting from an insured casualty, uninsured casualty or a partial taking in eminent domain proceedings, to the Project, or the Common Furnishings other than by ordinary wear and tear, the Association shall, subject to the provisions of Section 7.02, forthwith cause such damage or destruction to be repaired and shall use any available insurance or condemnation proceeds for such purpose. If the damage is not covered by condemnation proceeds or by insurance proceeds, or if the available insurance or condemnation proceeds are insufficient, the Association shall, subject to the provisions of Section 7.02 and the next succeeding sentence, levy a Special Assessment, in accordance with Section 5.07, against all Owners for the amount required to meet the cost of such repair or restoration. In the event the damage or destruction was caused by the intentional or negligent act or omission of an Owner or his Permitted User(s), the cost of such repair or the amount of such deficiency shall be a Personal Charge and paid by such Owner as provided in Section 5.08 above.

7.02 Extensive Damage or Destruction. In the event the amount of the Special Assessment which is required to be levied pursuant to Section 7.01 above, shall exceed twenty percent (20%) of the then cost to repair such damage or destruction, such Special Assessment shall not be levied unless such Special Assessment is approved by the vote or written consent of a majority of members of the Association. If such Special Assessment is not so approved, or if no action is taken with respect to such Special Assessment within 180 days following the date of such damage or destruction, such disapproval or inaction shall be deemed to be an election to terminate this Agreement, in which event this Agreement shall terminate upon the consummation of the sale of the Project, pursuant to Section 8.02(a) below, and the recordation of a document stating that this Agreement has been terminated in accordance with the provisions of this Section 7.02. The proceeds arising from such sale, together with any insurance proceeds or condemnation proceeds received as a result of such damage or destruction, shall be distributed by the Association to each Owner (subject to the rights of each Owner's Mortgagee) in the same proportion as the undivided interest of each Owner bears to the aggregate of all undivided interests in the Project; provided, however, that there shall be deducted from the amount due any Owner the amount, if any, due to the Association from such Owner.

7.03 Excess Insurance Proceeds. Any excess insurance or condemnation proceeds over the cost of repair or restoration, or any insurance or condemnation proceeds available in the event the Project or the Common Furnishings are not rebuilt, restored, repaired or replaced pursuant to the provisions of this Agreement, shall be distributed to the Owners (subject to the rights of such Owners' Mortgagees) in the same proportion that the undivided interest of each Owner bears to the aggregate of all undivided interests in the Project; provided, however, that there shall be deducted from the amount due any Owner, the amount, if any, of all sums due to the Association from such Owner.

## 8. Miscellaneous Provisions.

8.01 Amendment. This Agreement may be amended as follows:

(a) By Declarant, if and as required by any governmental agency.

(b) By the vote or written assent of two-thirds (2/3) of the total votes available to be voted by all Share Owners, which vote may be obtained by written consent, or at an annual or special meeting of the Association

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duly called in accordance with the Bylaws, Articles, and Declaration.

Any amendment shall be binding upon every Owner and every Share whether the burdens thereon are increased or decreased. No amendment shall require the consent or approval of any Mortgagee. Any amendment authorized hereby shall be evidenced by an instrument in writing, signed and acknowledged by Declarant (if the amendment is made pursuant to Section 8.01(a) above) or by any two officers of the Association, which amendment shall be effective upon recording the same in the Salt Lake County Recorder's Office. Any amendment shall thereafter be mailed to all Owners.

8.02 Termination. Subject to the provisions of Section 7.02, and Sections 8.02(a) and (b), this Agreement shall remain in effect for a period of fifty (50) years from the date hereof, and thereafter shall remain in effect for automatic, successive periods of ten (10) years each unless and until terminated in accordance with Sections 7.02, 8.02(a), or 8.02(b).

(a) Should the Owners determine to do so, in their best interests, this Agreement may be terminated by the vote or written assent of members (or proxies of members) of the Association representing at least two-thirds (2/3) of the total votes held by all Share Owners, and thereafter the Association shall sell all of the Units (except those Units with respect to which Declarant has previously terminated this Agreement pursuant to the terms of Section 8.03), and upon such sale and the recordation of an instrument stating that this Agreement is terminated pursuant to this Section 8.02(a), this Agreement shall terminate. The proceeds from the sale of said Units (after deducting all commissions and other expenses incurred in selling the Units) shall be distributed by the Association to each Owner (subject to the rights of each Owner's Mortgagee who has filed a notice with the Association) in the same proportion that the undivided interest of each Owner bears to the aggregate of all undivided interests in the Units being sold; provided, however, that there shall be deducted from the amount due any Owner, the amount, if any, due to the Association from such Owner.

(b) Each Owner, by entering into a Purchase Agreement or accepting the conveyance of a Share, whether or not it shall be so expressed in the Purchase Agreement or Original Deed, hereby constitutes and appoints the Association as his attorney-in-fact in his name, place and stead, and for his use and benefit, to execute, acknowledge and deliver on behalf of each Owner any instrument or document which is required in order to effect a sale, conveyance or transfer of

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the Units pursuant to this Section 8.02. Each Owner does further give and grant unto the Association, as his attorney-in-fact, full power and authority to do and perform any act necessary and proper to be done in the exercise of the foregoing power including, without limitation, the power and authority to petition for sale in lieu of partition if necessary to effect such conveyance, as fully as each Owner might or could do. This special power of attorney is coupled with an interest, irrevocable and binding on the successors and assigns of each Owner.

8.03 Proxy. Each Owner, by entering into a purchase agreement or accepting title by other conveyance to a Share, whether or not it shall be so expressed in any such instrument, hereby grants and conveys to the Committee a proxy, revocable as hereinafter set forth, to vote all of said Owner's vote in the Association at any meetings of the Association, or with respect to any action by the Association requiring the vote of its members. This proxy may be revoked by each Owner with respect to any meeting of the Association, or with respect to any action of the Association requiring the vote of its members, by said Owner (a) being in attendance at the meeting of the Association, (b) giving written notification of revocation to the Association, or (c) by granting a written proxy to any other person or entity who is thereafter in attendance at the meeting. Any such revocation may only be accomplished on a meeting by meeting basis, and the proxy hereby granted to the Association shall be revived and in full force and effect at subsequent meetings even though revoked at a prior meeting, unless the Owner revokes this proxy at such a subsequent meeting also.

8.04 Partial Termination.

(a) Declarant, with respect to any Unit in which no Share has been sold or conveyed, and any Owner with respect to any Unit in which he owns all 50 Shares, may terminate this Agreement with respect to such Unit and thereby withdraw such Unit from the lien, covenants, conditions, restrictions and rights granted and imposed by this Agreement, and thus from the time-share scheme created by this Agreement. Notwithstanding the preceding, Declarant covenants not to withdraw more than 13 One Bedroom Units and 105 Studio Units pursuant to this Section 8.04. Declarant or any Owner so withdrawing a Unit shall execute a Notice of Termination with respect to the Unit(s) withdrawn from the lien of this Agreement pursuant to this Section 8.04, and file the same with the Salt Lake County Recorder, and thereafter the Unit shall no longer be subject to this Agreement. However, the Unit or Units withdrawn (the "Withdrawn Unit or Units") shall continue to be subject to the provisions of the Declaration, the

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Articles and the Bylaws, and the Unit Owners of the Withdrawn Units shall continue to be members of the Association entitled to vote their percentage interest in the Project as more fully defined in the Declaration and the Bylaws. Any Unit Owner may again subject any Withdrawn Unit to this Agreement by filing a Notice of the same with the Salt Lake County Recorder and giving notice of the same to the Association, and thereafter the Unit will be subject to this Agreement, including without limitation the increased assessments as discussed in Section 8.04(d) below.

(b) By executing this Agreement, Declarant has subjected all of the Units in the Project to this Agreement. However, it is possible under Section 8.04(a) above for Declarant or other Owners to withdraw some of the Units from the scheme of timeshare ownership and use as is established by this Agreement. In the event of such withdrawal of some Units, it is nonetheless the intent, and every Owner, by acquiring ownership to a Share, and every Unit Owner by acquiring ownership to a Unit, agrees that if and when any Units are withdrawn pursuant to Section 8.04(a), that there will nonetheless continue to be only one association of Unit and Share Owners, which association will be the Association, and all of the Unit Owners and Share Owners would be members of the Association with a vote equal to their respective interests in the Common Areas of the Project as defined in the Declaration and this Agreement, and all of the Unit and Share Owners would be entitled to vote that interest, whether by proxy or otherwise, at any meeting of the Association. However, because of the different interests, and the different expenses related to Unit Owners versus Share Owners, the protections hereinafter set forth in Sections 8.04(c) and (d) are granted to both the group of all Unit Owners and the group of all Share Owners, and all Unit Owners and Share Owners, by accepting ownership to a Unit or Share, agree to be bound by said provisions in the event Withdrawn Units are created pursuant to Section 8.04(a).

(c) Notwithstanding any other provision to the contrary in this Agreement, the Declaration, the Articles, or the Bylaws, the Unit Owners of Withdrawn Units, as a class, and the Share Owners, as a class, shall each have the right to approve or disapprove of any matter voted upon by the Association (which approval shall be by majority vote of the total votes available in each class of owners unless a higher percentage is required by the Declaration, Bylaws, Articles, or this Agreement), if the matter to be voted upon by the Association, if approved, would have the effect of:

(i) Substantially diminishing or impairing any right, power, authority, protection or control granted to all Owners (whether of whole Units or Shares), or to

either class of Unit Owners or Share Owners, by the Declaration, the Bylaws and the Articles, and, with respect to Shares, by this Agreement;

(ii) Substantially increasing the costs and expenses to be borne by either the class of Unit Owners or the class of Share Owners, vis-a-vis each other, beyond what would otherwise be their obligation as set forth in Sections 5 and 8.04 of this Agreement;

(iii) Substantially altering the scheme of ownership, maintenance, control and use of the Common Areas as created by the Declaration; or

(iv) Amending this Section 8.04.

(d) Paragraph 14 of the Declaration provides for the assessment of all owners in the Project for the purpose of paying the common expenses of the Project. These expenses are more specifically enumerated in Section 5.03 of this Agreement. Regardless of the fact that Unit Owners of Withdrawn Units shall have withdrawn their Units from the time-share scheme of this Agreement, they nonetheless agree that the Association shall continue to operate in accordance with the provisions of this Agreement in addition to the provisions of the Declaration, the Bylaws and the Articles, including specifically without limitation the right to collect the assessments and pay the Basic Expenses, Special Assessments, and Personal Charges as defined in Section 5 of this Agreement.

Further, all of the Unit and Share Owners in the Project, by acquiring ownership to a Unit or a Share, agree that the Association shall divide all Basic Expenses and Special Assessments into two categories, one category being those expenses which relate solely to the operation of the time-share scheme of ownership as created by this Agreement, and which are therefore particular to the Share Owners (hereinafter the "Share Owners Expenses"), and the other category being those expenses of the Project which are common to all Units, and which should be shared by all Units on an equal basis, regardless of whether the Unit is or is not subject to the covenants, conditions and restrictions of this Agreement (hereinafter the "Whole Unit Expenses"). After the Association has divided all costs and expenses into these two categories, the Whole Unit Expenses shall be divided among all of the Units in the Project in proportion to the percentage each Unit has in the Common Areas of the Project, and thereafter each Unit Owner shall be assessed his assessment, and the remaining Whole Unit Expenses (i.e., those expenses relating to Units that are subject to this Agreement) shall be assessed to all Share

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Owners by including such amount in the Share Owners Expenses. The Share Owners Expenses shall be assessed only against the Share Owners, in proportion to the interest that each Share Owner's interest in the Project bears to the total of all Share Owners' interests in the Project. The Association shall make a good faith effort to do all it can to properly allocate the expenses of the Project in a fair and reasonable manner among all of the Share and Unit Owners, with the intent being to divide the costs and expenses fairly and evenly without imposing upon the Unit Owners the burdens and expenses of the time-share program created by this Agreement.

By way of illustration and without limiting the generality of the foregoing, Share Owner Expenses shall include the costs of maid services, the reservation system, painting, refurbishing, renovating and otherwise maintaining the interior of the Units and the furniture therein (since pursuant to the Declaration, Unit Owners are obligated to maintain and refurbish the interiors of their own units), special insurance that may be required because of the time-share program created by this Agreement, extra or special accounting and/or legal expenses incurred to manage and account for the timeshare system, and any other costs that are unique or incurred primarily because of the timeshare nature of the Project. Whole Unit Expenses shall include by way of illustration but without limiting the generality of the foregoing, real property taxes, general fire and liability insurance, costs of maintaining the Common Areas of the Project, costs of cleaning, repairing, refurbishing, removing snow from, and otherwise maintaining the sidewalks, parking areas, and other Common Areas of the Project.

Some expenses, such as the costs of employees of the Association, or the expenses of the Manager who is hired to perform all or most of the duties of the Association, will be difficult to precisely allocate between Whole Unit Expenses and Share Owners Expenses, but the Committee shall use its best efforts in good faith to properly allocate between the two categories in a manner consistent with the guidelines set forth above. Nonetheless, in light of the potential difficulty of the same, the Association, notwithstanding anything to the contrary in this Section 8.04(d), shall not assess the Unit Owners more than 125% of what they would be assessed in a comparable condominium project located in Salt Lake City, Utah, unless the Association can show that there are expenses of the Project that are unique to the Project and not found in the other condominium projects that are being used as comparables. After this ceiling is imposed upon the assessments to Unit Owners, if the Whole Unit Expenses are not fully paid, then any excess expenses shall be a part of the Share Owners Expenses and therefore shall be borne by the Share Owners.



8.05 Notices. Notices provided for in this Agreement shall be in writing and shall be deemed sufficiently given either when delivered personally at the appropriate address set forth below (in which event, such notice shall be deemed effective only upon such delivery) or 48 hours after deposit of the same in any United States post office box in the state to which the notice is addressed or 72 hours after deposit of same in any such post office box other than in the state to which the notice is addressed, postage prepaid, addressed as set forth below. Any notice to an Owner required under this Agreement shall be addressed to the Owner at the last address for such Owner appearing in the records of the Association, or, if there be none, at the address of the Project. Notices to the Association shall be addressed to the address designated by the Association by written notice to all Owners. Notices to the Manager shall be addressed to the address designated by the Manager by written notice to all Owners. Notices to Declarant shall be addressed to:

Bertagnole Properties  
5225 Wiley Post Way  
Suite 201  
Salt Lake City, Utah 84116

The addresses and addressees for purposes of this Section 8.05 may be changed by giving written notice of such change in the manner herein provided for giving notice. Unless and until such written notice is received, the last address and addressee as stated by written notice or as provided herein, if no written notice of change has been sent or received, shall be deemed to continue in effect for all purposes hereunder.

8.06 Notification of Sale of Shares. No later than five (5) days after the sale or transfer of any Share under circumstances whereby the transferee becomes the Owner thereof, the transferee shall notify the Association in writing in whatever form required by the Association of such pending sale or transfer. Such notice shall set forth the name and address of the transferee and transferor, and the date on which such sale or transfer was consummated. Unless and until such notice is given, the Association shall not be required to recognize the transferee as the Owner of the Share involved. Prior to receipt of any such notification by the Association or the Manager, any and all communications required or permitted to be given by the Association shall be deemed duly given and made to the transferee if duly and timely made and given to such transferee's transferor.

8.07 Severability and the Rule Against Perpetuities. If any provision of this Agreement, or any section, sentence, clause, phrase or word or the application thereof in

any circumstances, shall be held invalid, the validity of the remainder of this Agreement and of the application of such provision, sentence, clause, phrase or word under any other circumstances shall not be affected thereby. If any provision of this Agreement would violate the Rule Against Perpetuities or any other limitation on the duration of the provisions contained herein imposed by law, then such provisions shall be deemed to remain in effect only for the maximum permissible period permitted by law or until 21 years after the death of the last survivor of the now living descendants of the present officers of Declarant, as stated on documents on file in the office of the Secretary of State of the State of Utah, whichever is later.

8.08 Successors. The provisions of this Agreement shall be binding upon all parties having or acquiring any Share or any right, title or interest therein and shall be for the benefit of each Owner and his heirs, successors and assigns. Each Owner (including Declarant) shall be fully discharged and relieved of liability on the covenants herein insofar as such covenants relate to each Share upon ceasing to own such Share and paying all sums and performing all obligations hereunder insofar as the same relate to each Share up to the time his ownership interest is terminated. All of the rights and obligations of Declarant herein are fully assignable to and assumable by a third party to whom Declarant may assign its rights and obligations.

8.09 Interpretation. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Utah. The captions of the paragraphs and sections hereof are for convenience only and shall not be considered to expand, modify or aid in the interpretation, construction or meaning of this Agreement. As used herein the singular shall include the plural and the masculine shall include the feminine and neuter.

8.10 No Waiver. The failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of the right to enforce such provision thereafter.

9. Legal Description. The project subject to this Agreement shall be all Units of The Kimball Condominiums, according to the Declaration and Survey Map thereof referred to above, and the undivided interests in the Common Areas and facilities appurtenant thereto.


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IN WITNESS WHEREOF the Declarant has caused the names of its duly authorized officers to be signed hereunder the day and year first above written.

BERTAGNOLE PROPERTIES,  
a Utah general partnership

BY BERTAGNOLE INVESTMENT COMPANY  
LIMITED PARTNERSHIP, a Utah limited  
partnership

Its General Partner

By   
EMANUEL A. FLOOR  
Its Managing General Partner

BY FRANKLIN FINANCIAL, a Utah  
corporation

Its General Partner

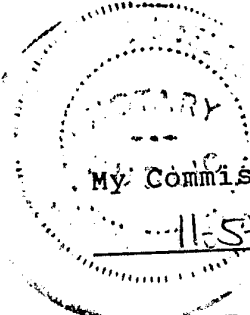
By   
RICHARD A. CHRISTENSON  
Its President

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

On the 3RD day of MAY, 1983, personally appeared before me EMANUEL A. FLOOR, who, being by me duly sworn, did say that he is the Managing General Partner of Bertagnole Investment Company Limited Partnership, a Utah limited partnership, which limited partnership is a general partner of Bertagnole Properties, a Utah general partnership, and that said instrument was signed in behalf of said partnership by authority of a resolution of its partners, and said EMANUEL A. FLOOR acknowledged to me that said Bertagnole Properties executed the same.

Carole McQuay  
NOTARY PUBLIC  
Residing at: Salt Lake City, Utah

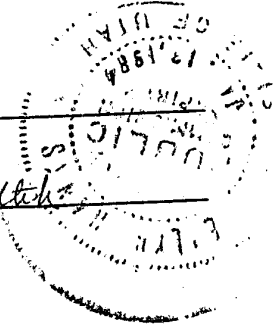


My Commission Expires:  
11-5-86

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

On the 3<sup>rd</sup> day of May, 1983, personally appeared before me RICHARD A. CHRISTENSON, who, being by me duly sworn, did say that he is the President of Franklin Financial, a Utah corporation, which corporation is a general partner of Bertagnole Properties, a Utah general partnership, and that said instrument was signed in behalf of said corporation by authority of its by-laws or a resolution of its board of directors, and said RICHARD A. CHRISTENSON acknowledged to me that said Bertagnole Properties executed the same.

Richard A. Christenson  
NOTARY PUBLIC  
Residing at: Sandy, Utah



My Commission Expires:  
Jan 13, 1984

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EXHIBIT "A"

BEGINNING at the Southwest corner of Lot 4,  
Block 93, Plat "A", Salt Lake City Survey;  
and running thence South  $0^{\circ}01'13''$  East 37.25  
feet; thence North  $89^{\circ}57'47''$  East 298.0  
feet; thence North  $0^{\circ}02'13''$  West 136.25  
feet; thence South  $89^{\circ}57'47''$  West 298.0  
feet; thence South  $0^{\circ}02'13''$  East 99.0 feet  
to the point of beginning. Containing 0.932  
acres.

TOGETHER WITH AND SUBJECT TO a 10-foot  
right-of-way 5 feet on each side of and  
parallel to the North line of the above  
property.

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EXHIBIT "B"

THE KIMBALL CONDOMINIUMS  
A Condominium Project recorded in Salt Lake County  
January 12, 1982 as Entry No. 3638967,  
Book 5330, Page 1324

<u>Unit Designation</u>	<u>Undivided Interest in Common Areas and Facilities</u>
105	.925968
106	.92596
107	.61728
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Unit Designation

Undivided Interest  
in Common Areas and  
Facilities

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Unit Designation

Undivided Interest  
in Common Areas and  
Facilities

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Unit Designation

Undivided Interest  
in Common Areas and  
Facilities

413	.92596
415	.61728
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