

WHEN RECORDED RETURN TO:

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6805205
12/03/97 10:43 AM 75.00
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
BALLARD SPAHR ANDREWS &
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201 S MAIN #1200 SLC,UT 84111
REC BY:R JORDAN ,DEPUTY - WI

6805205

**SEVENTH AMENDMENT TO THE SECOND AMENDED
DECLARATION OF CONDOMINIUM
OF THE
KIMBALL CONDOMINIUMS, A CONDOMINIUM PROJECT
AND
SIXTH AMENDMENT TO AMENDED AND RESTATED USE AND
OCCUPANCY AGREEMENT**

THIS SEVENTH AMENDMENT TO THE SECOND AMENDED DECLARATION OF
CONDOMINIUM OF THE KIMBALL CONDOMINIUMS AND SIXTH AMENDMENT TO
AMENDED AND RESTATED USE AND OCCUPANCY AGREEMENT, (collectively
"Seventh Amendment"), is made and entered into this 26th day of ^{November} ~~October~~, 1997, by the
Kimball Condominium Owners Association, a Utah non-profit corporation (the "Association").

WITNESSETH:

WHEREAS, pursuant to that certain Second Amended Declaration of Condominium of
the Kimball Condominiums dated December 10, 1981, recorded on January 12, 1982, as Entry
No. 3638967, in Book 5330, beginning at Page 1324, official records of the Salt Lake County,
Utah, Recorder (the "Second Amended Declaration"), Franklin Financial, a Utah corporation
("Franklin"), subjected that certain real property and improvements located at 150 North Main
Street, in Salt Lake City, Salt Lake County, Utah, described as follows:

Beginning at the SW corner of Lot 4, Block 93, Plat A, Salt Lake
City Survey, thence S 0°02'13" E, 37.25 feet; thence N 89°57'47"
E, 298.0 feet; thence N 0°02'13" W 136.25 feet; thence S 89° 57'
47" W, 298.0 feet; thence S °02' 13" E, 99.0 feet to the Point of
Beginning, containing 0.932 Acres together with and subject to a

BK 7822 PG 0109

10-foot right-of-way 5 feet on each side and parallel to the north property line.

(the "Property") to the provisions of the Utah Condominium Ownership Act, Utah Code Ann. Section 57-8-1 et seq. (the "Act"), and to the covenants, conditions and restrictions set forth in the Second Amended Declaration; and

WHEREAS, the Second Amended Declaration was amended by the following instruments recorded with the Salt Lake County, Utah, Recorder:

<u>Instrument</u>	<u>Date</u>	<u>Recording Information</u>
Amendment to the Second Amended Declaration	2/24/82	Recorded 3/5/82 Entry No. 3654014 Book 5347 Beginning at Page 1092
Second Amendment to the Second Amended Declaration	12/1/83	Recorded 12/5/83 Entry No. 3877150 Book 5512 Beginning at Page 1056
Third Amendment to the Second Amended Declaration	7/3/84	Recorded 8/31/84 Entry No. 3987819 Book 5586 Beginning at Page 2427
Fourth Amendment to the Second Amended Declaration	2/27/89	Recorded 3/14/89 Entry No. 4746199 Book 6110 Beginning at Page 355
Fifth Amendment to the Second Amended Declaration	5/27/94	Recorded 6/3/94 Entry No. 5840857 Book 6954 Beginning at Page 2004

Sixth Amendment to the
Second Amended
Declaration ("Sixth
Amendment")

3/25/97

Recorded September 23, 1997
Entry No. 6746247
Book 7764
Beginning at Page 0851

All of the foregoing amendments, including the Second Amended Declaration, are hereinafter sometimes referred to collectively as the "Second Amended Declaration, as Amended"; and

WHEREAS, pursuant to that certain Amended and Restated Use and Occupancy Agreement dated May 3, 1983, recorded on May 3, 1983, as Entry No. 3788556, in Book 5456, beginning at Page 560, official records of the Salt Lake County, Utah, Recorder (the "Amended Use and Occupancy Agreement"), Franklin subjected the Property to certain additional restrictive covenants; and

WHEREAS, the Amended Use and Occupancy Agreement was amended by the following instruments recorded with the Salt Lake County, Utah, Recorder:

<u>Instrument</u>	<u>Date</u>	<u>Recording Information</u>
First Amendment to Amended and Restated Use and Occupancy Agreement	11/30/83	Recorded 12/5/83 Entry No. 3877149 Book 5512 Beginning at Page 1048
Second Amendment to Amended and Restated Use and Occupancy Agreement	7/3/84	Recorded 8/31/84 Entry No. 3987818 Book 5586 Beginning at Page 2421
Third Amendment to Amended and Restated Use and Occupancy Agreement	2/27/89	Recorded 3/14/89 Entry No. 4746199 Book 6110 Page 355

Fourth Amendment to
Amended and Related Use
and Occupancy Agreement

5/27/94

Recorded 6/3/94
Entry No. 5840857
Book 6954
Beginning at Page 2004

Fifth Amendment to
Amended and Restated Use
and Occupancy Agreement

3/25/97

Recorded September 23, 1997
Entry No. 6746247
Book 7764
Beginning at Page 0851

All of the foregoing amendments, including the Amended Use and Occupancy Agreement, are hereinafter sometimes referred to collectively as the "Amended Use and Occupancy Agreement, as Amended"; and

WHEREAS, subsequent to recordation of the Second Amended Declaration, as Amended, and the Amended Use and Occupancy Agreement, as Amended, all of Franklin's right, title and interest in and to the property and as "Declarant" under the Second Amended Declaration, as Amended, and the Amended Use and Occupancy Agreement, as Amended, was transferred, conveyed and assigned by mesne instruments of record to Kimball Associates, Inc., a Utah corporation ("Debtor"); and

WHEREAS, on July 9, 1986, Debtor filed a Petition for Relief under Title 11 of the United States Code, in the United States Bankruptcy Court for the District of Utah, Central Division, Captioned In Re Kimball Associates Inc., Bankruptcy No. 86C-02890 (the "Bankruptcy Case"); and

WHEREAS, pursuant to that certain Third Amended Plan of Reorganization filed in the Bankruptcy Case on November 18, 1988 (the "Plan"), by the Association and First Federal of Pittsburgh, which Plan was confirmed by order of the United States Bankruptcy Court for the District of Utah, Central Division, entered on December 22, 1988 (the "Order"), all of the right, title and interest of Debtor in and to the Property, and as "Declarant" under the Second

Amended Declaration, as Amended, and the Amended Use and Occupancy Agreement, as Amended, was transferred, conveyed and assigned to the Association, subject to the rights of certain "Timeshare Purchasers" and other liabilities, as defined and described in the Plan; and

WHEREAS, pursuant to the Plan and the Order, the Association, on behalf of itself and as the attorney-in-fact for the Timeshare Purchasers, was authorized to and did amend the Second Amended Declaration, as previously amended, and the Amended Use and Occupancy Agreement, as previously amended; and

WHEREAS, pursuant to the Plan and the Order, the Association, on behalf of itself and as the attorney-in-fact for the Timeshare Purchasers, was authorized, to record and did record and, simultaneously with the recording of the Fourth Amendment, that certain Amended and Restated Survey Map of the Kimball Condominiums, with the Salt Lake County, Utah, Recorder (the "Amended Survey Map"), recorded March 14, 1989 as Entry No. 4746198 at Book 89-3, page 16, which superseded and amended in its entirety all previously recorded Record of Survey Maps with respect to the Property, recorded for the purpose of establishing an as-built survey of the project as it then existed, to eliminate the south building and condominium estates created under the original Survey Map (recorded October 20, 1978, as Entry No. 3185155, in Book 78-10 at page 297), to eliminate certain units that did not exist, and to amend the configuration of the existing units, all consistent with the terms of the Plan and the Order; and

WHEREAS, the Association, on behalf of itself and as the attorney-in-fact for the Timeshare Purchasers, was authorized, to record and did record, simultaneously with the recording of the Fifth Amendment, that certain Second Amended Supplemental Record of Survey Map for the Kimball Condominiums, with the Salt Lake County, Utah Recorder (the "Second Amended Survey Map"), recorded June 3, 1994 as Entry No. 5840856 at Book 94-6, Page 161,

which superseded and amended in its entirety all previously-recorded Record of Survey Maps with respect to the Property, recorded for the purpose of establishing an as-built survey of the project as it then existed and to identify certain units as "units for possible reconfiguration", all consistent with the terms of the Plan and the Order; and

WHEREAS, the Association, on behalf of itself and as the attorney-in-fact for the Timeshare Purchaser, was authorized, to record and did record, simultaneously with the recording of the Sixth Amendment, that certain Third Amended Supplemental Record of Survey Map for the Kimball Condominiums, with the Salt Lake County, Utah Recorder (the "Third Amended Survey Map"), recorded September 23, 1997, as Entry No. 6746246, at Book 97-9P, Page 297, which superseded and amended in its entirety all previously recorded Record of Survey Maps with respect to the Property, recorded for the purpose of establishing an as-built survey of the Project as it then existed and to identify the reconfiguration of certain units, designate the completion of certain other units and identify the undivided ownership interest in the Common Areas and Facilities associated with all units in the Project, all consistent with the terms of the Plan and the Order; and

WHEREAS, the Association is the owner of certain real property located adjacent to the Property which is not subject to the Act, but which the Owners, by vote of seventy five percent of the total votes of the Association, and Board of Trustees have determined is surplus property and that it is in the best interest of the Association to sell such property to obtain cash for the Association and to eliminate expenses related to such property such as taxes and other carrying costs; and

WHEREAS, certain areas of the Project have been utilized as common areas notwithstanding their denomination under the Second Amended Declaration as Units and likewise

certain Units denominated under the Second Amended Declaration have been used as common areas and in order to conform the Second Amended Declaration to the actual and intended use of such properties, the Board finds it in the best interest of the Association to amend the Second Amended Declaration to accurately identify the use of said units and common areas and to coordinate such use with the Fourth Amended Survey Map which sets forth the actual and proper use and designation of such Units and common areas; and

WHEREAS, the Association and its successors and assigns, desire and intend to hold, own, convey and lease the Property and the individual condominium Units on the Property, subject to the covenants, conditions and restrictions set forth in the second Amended Declaration, as Amended, the Amended Use and Occupancy Agreement, as Amended, the Fourth Amended Supplemental Record of Survey Map, and this Seventh Amendment.

NOW, THEREFORE, in consideration of the premises and pursuant to the Plan and the Order, as authorized by the Plan and Order, and by executing this Seventh Amendment and the Fourth Amended Supplemental Record of Survey Map of the Kimball Condominiums ("Fourth Amended Survey Map"), and pursuant to the Act, the Association as successor Declarant hereby amends the Second Amended Declaration as follows:

ARTICLE I

Designation of Units and Common Areas. The following areas are designated, respectively, as Common Areas and Units:

- a. The Common Area located immediately adjacent to Unit 244 in the Third Amended Survey Map is hereby designated as Unit 248 as set forth in the Fourth Amended Survey Map.

b. The portion of the Project identified as Unit 137 in the Third Amended Survey Map is hereby redesignated as Common Area as identified on the Fourth Amended Survey Map;

c. The Common Area on the fifth floor as designated by the Third Amended Survey Map is hereby reconfigured to become Unit 555 as identified on the Fourth Amended Survey Map.

ARTICLE II

That certain area identified in the Third Amended Survey Map as existing parking undeveloped area is not a part of the Project and shall not be considered subject to the Fourth Amended Survey Map or the Second Amended Declaration, as amended.

ARTICLE III

Undivided Ownership Interest in Common Areas and Facilities: Pursuant to the provisions of Section 6.3 of the Second Amended Declaration (Article I, Section 1.1L of the Fifth Amendment) which authorizes changes in Undivided Interest in the Common Areas, Section 9(e) of the Second Amended Declaration (Article I, Section 1.1L of the Fifth Amendment) is amended to read as follows:

(e) Undivided Ownership Interest in Common Areas and Facilities: The percentage or fraction of undivided ownership interest in the Common Areas and Facilities appurtenant to each Unit and its Owner, for all purposes, including voting, is set forth on Exhibit "A" attached to this Seventh Amendment, or as set forth on any subsequent amendment duly and properly executed.

IN WITNESS WHEREOF, the undersigned has caused this Seventh Amendment to be executed by its duly authorized agent, pursuant to the Plan and Order, this 26th day of ~~October~~^{November}, 1997.

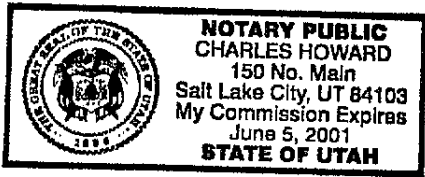
KIMBALL CONDOMINIUM OWNERS
ASSOCIATION, a Utah non-profit
corporation

By *Terrence B. Oberhansley*
_____, President

By _____
_____, Vice President

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

On the 26 day of November, 1997, personally appeared before me Fern Oberhausky, who, being by me duly sworn, did say that he is the President of Kimball Condominium Owners Association, a Utah non-profit corporation, that said instrument was signed in behalf of said corporation by authority of its bylaws or a resolution of its board of directors, and said _____ acknowledged to me that said corporation executed the same.



Charles Howard

NOTARY PUBLIC

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

On the ____ day of _____, 1997, personally appeared before me _____, who, being by me duly sworn, did say that he is the Vice President of Kimball Condominium Owners Association, a Utah non-profit corporation, that said instrument was signed in behalf of said corporation by authority of its bylaws or a resolution of its board of directors, and said _____ acknowledged to me that said corporation executed the same.

NOTARY PUBLIC

EXHIBIT "A"

LIST OF UNIT NUMBERS AND
UNDIVIDED OWNERSHIP INTERESTS IN COMMON AREAS
AND FACILITIES APPURTENANT TO EACH UNIT

<u>Unit Designation</u>	<u>Unit Size Square Ft.</u>	<u>Undivided Interest in Common Areas and Facilities</u>
125	471	0.018
129	473	0.018
134	713	0.027
138	835	0.031
139	555	0.021
143	562	0.021
144	553	0.021
225	742	0.028
226	706	0.026
230	693	0.026
233	747	0.028
234	751	0.028
237	284	0.011
238	867	0.032
239	566	0.021
243	580	0.022
244	572	0.021
247	300	0.011
248	305	0.011
325	500	0.019
326	749	0.028
329	500	0.019
330	751	0.028
333	500	0.019
334	771	0.029
337	290	0.011
338	886	0.033
339	584	0.022
343	597	0.022
344	598	0.022
347	300	0.011
348	305	0.011
425	773	0.029
426	749	0.028
430	751	0.028
433	767	0.029
434	766	0.029
437	291	0.011
438	889	0.033
439	586	0.022
443	600	0.022
444	603	0.023
447	299	0.011
448	305	0.011
555	713	0.027
		TOTAL 1.000

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