

3661095

USE AND OCCUPANCY AGREEMENT

THIS AGREEMENT, made and entered into this 5th day of February, 1982, by and among KTS, a Utah corporation, hereinafter referred to as "Declarant," and the persons or entities whose signatures are affixed hereto as Owners of interests in The Kimball Condominiums, hereinafter referred to as "Owner or Owners;"

WHEREAS, Declarant has recorded a Declaration of The Kimball Condominiums on January 12, 1982, as Entry No. 3638967 in Book 5330 at Page 1324, Official Records, and the Declarant herein is the successor in interest to the Declarant named in that Declaration and has sold or conveyed interests in units of The Kimball Condominiums to the Owners and the Owners have purchased and accepted their interests in The Kimball Condominiums, subject to the terms of this Use and Occupancy Agreement; and

WHEREAS, the parties hereto desire to establish a common scheme and plan for the use, enjoyment, repair, maintenance, restoration and improvement of the property subject to the Declaration and the interests therein conveyed or reserved and for the payment of taxes, assessments, insurance premiums, maintenance and other expenses pertaining thereto.

NOW, THEREFORE, in consideration of the covenants contained herein and of the terms of the sale and purchase of interests in The Kimball Condominiums from Declarant to the Owners, it is hereby mutually agreed as follows:

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

1.1 "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.

1.2 "Association" means The Kimball Condominiums Owners Association, a Utah non-profit corporation, whose members consist of the Owners.

1.3 "Board" means the Board of Trustees of the Association.

1.4 "By-Laws" means the By-Laws of the Association adopted by the Board, as the same may be amended from time to time.

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

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1.6 "Owner" means and includes (a) the grantee or 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.

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

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

1.9 "Common Furnishings" means all furniture, furnishings, appliances, fixtures and 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 Property.

1.10 "Declarant" means Franklin Financial, a Utah corporation, or any successor-in-interest by merger or by express assignment of the rights of Declarant hereunder by an instrument executed by Declarant and (a) recorded in the Office of the County Recorder, County of Salt Lake, or (b) filed with the Secretary of the Association.

1.11 "Declaration" means the Second Amended Declaration of The Kimball Condominiums and any amendments thereto.

1.12 "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 Property for time periods in such other projects.

1.13 "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.

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

1.15 "Managing Agent" means the agent engaged by the Board pursuant to and in the manner provided in Paragraph 4.3 hereof.

1.16 "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.

1.17 "Original Deed" means each deed from Declarant first recorded after the date hereof which conveys each Share from Declarant to a buyer of a Share.

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

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

1.20 "Property" means all of the Units and Common Areas defined in the Declaration and all Shares therein.

1.21 "Purchase Agreement" means a Purchase and Sales 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.

1.22 "Rules and Regulations" means the rules and regulations adopted and promulgated from time to time pursuant to subparagraph 4.2(d) of this Agreement relating to the possession, use and enjoyment of the Property.

1.23 "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.

1.24 "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.

1.25 "Starting Date" means the date on which the first Purchase Agreement is accepted by Declarant.

1.26 "Support Areas" means the following portions of the Property: The Managing Agent's Unit, service and maintenance area, the registration desk area, mail room, office, laundry rooms, supply room and storage rooms.

1.27 "Unit Type" means one of the two types of Units within the Property, being either:

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

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

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. 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 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.

2.1 Reservation and Use Rights of Owners. Subject to all the terms and conditions contained elsewhere in this Agreement, an Owner shall have the right, for each Share owned (and, in the case of Declarant, during all periods not so reserved by other Owners), 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 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).

2.2 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 Paragraph 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.

2.3 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 attorney's fees incurred in connection with removing, evicting or ejecting the Detaining Owner and/or Detaining User from such Unit, and costs (including reasonable attorney's fees) incurred in collecting such reimbursement(s); and (d) pay to the Detained Owner and/or the Detained User

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entitled to use and occupy the Unit during such wrongful occupancy, as liquidated damages (in addition to the costs and expenses set forth in subparagraph 2.3(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 Property. 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 Use Period(s), then (i) such Owner shall be deemed a Detaining Owner, (ii) the foregoing provisions of this Paragraph 2.3 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 purposes of this Paragraph 2.3, the act or negligence of a Permitted User shall be deemed to be the act of the Owner.

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2.4 Use Restrictions. 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 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 and 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.

2.5 Easement for Sales, Resales, Customer Service and Related Purposes. Declarant, on behalf of itself, its successors and assigns, and its and their respective agents, employees, contractors, subcontractors, invitees and other authorized personnel, shall have, for a period of ten (10) years following the Starting Date, 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 service 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 Property; 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 and occupy 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.

2.6 Rental of Units by Declarant. Declarant 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 Declarant shall inure to the benefit of Declarant. Declarant shall have the right, in its discretion, upon the sale of all or substantially all of

the Shares in the Units, to assign its rights under this Paragraph 2.6 to the Association. Notwithstanding the foregoing provisions of this Paragraph 2.6, 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 by Declarant are paid in full, have the right during all times not included in any Use Period, to rent the Units to the general public. No rental (whether by Declarant or the Association) shall interfere with or diminish the rights of 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 Paragraph 2.6, shall be borne by Declarant. In no event shall any rental be made by Declarant or the Association for the account of any individual Owner. Declarant, on behalf of itself, its successors and assigns, and its and their 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 Paragraph 2.6 until such time, if at all, as Declarant shall assign to the Association its right to rent Units.

2.7 Use of Support Areas by the Association. Except as provided in Paragraphs 2.5 and 2.6 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.

2.8 Transfer of Interest. No Owner shall sell, convey, hypothecate or encumber less than all of his interest in his Share or Unit. Any sale, conveyance, hypothecation or encumbrance by any Owner of less than all of his interest in his Share or Unit 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.

2.9 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 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.

2.10 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 Paragraph 8.2, an Owner shall have the rights specified in Paragraph 8.2.

(b) Except as provided in subparagraph 2.10(a) above and Paragraph 8.2 below, no Owner or other person or entity acquiring any right, lien or interest in any of the Property shall seek or obtain, through any legal procedures, judicial partition of the Property 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.

2.11 Protection of Interest. Except as provided in Paragraph 2.9, 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 Property or the Share of any Owner, or any part thereof, 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 attorney's 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 of the assertion of any such attachment, lien, claim, charge or other legal process and shall reimburse the Association for all reasonable attorney's fees or other costs incurred in respect thereof.

3. The Association.

3.1 Association. The Kimball Condominiums Owners Association, a Utah non-profit corporation, shall be the Association.

3.2 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.

3.3 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.

3.4 Voting. In accordance with the provisions of the By-Laws, the Association shall have two classes of voting members:

(a) Class "A" Members. Class "A" Members shall be all Owners, except Declarant, and they shall be entitled to one vote for each Share owned; provided, when more than one person or entity owns a Share, all such persons and entities shall be members and the vote for such Share shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Share.

(b) Class "B" Member. The Class "B" Member shall be Declarant, who shall be entitled to three votes for each Share owned. Such Class B Membership shall cease and be converted to Class "A" Membership when the total votes outstanding in the Class "A" Membership equal the total votes outstanding in the Class "B" Membership.

3.5 Approval of Actions of the Association. So long as there are two classes of membership in the Association, any action by the Association which, pursuant to this Agreement, requires the approval of the Association membership before being undertaken shall require the vote or written consent of that percentage of the votes of each class of membership prescribed in the provision hereof requiring such approval, except that the election of the Board shall be governed by the provisions of Paragraph 3.6.

3.6 Board of Trustees. The Board shall initially consist of the persons appointed by Declarant. At the time of the first annual meeting of the members, the members (including Declarant) shall elect, in accordance with the By-Laws, a Board replacing the initial Board as defined in the preceding sentence. From and after the first election of the Board by the members of the Association and for so long as (i) a majority of the voting power of the Association resides in Declarant, or (ii) there are two outstanding classes of membership in the Association pursuant to Paragraph 3.4 hereof, not less than 20% of the trustees shall be elected solely by the votes of members of the Association other than Declarant, pursuant to the special election procedures set forth in the By-Laws.

4. Management.

4.1 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 Board, its officers, or other duly authorized representatives) may, subject to the provisions of the Articles, the By-Laws and the Declaration and this Agreement, exercise any and all rights and powers herein 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.

4.2 Specific Powers and Duties of the Association. The management and operation of the Property, the maintenance and repair of the Property, 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 Property, to acquire (by lease or purchase), maintain, repair and replace Common Furnishings as needed, to administer the operation as 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 or refurnish the Property, 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 Property, 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 Property or the Common Furnishings, and to discharge, contest or protest liens or charges affecting the Property.

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

(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 Property, 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 Property and the enforcement of this Agreement, the By-Laws and the Rules and Regulations.

(f) Insurance. To obtain and pay the cost of (i) insurance covering the Property 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 Property; 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 Managing Agent and any employee of either the Managing Agent 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 Paragraphs 5 and 6 hereof in order to pay the expenses of the operation including the fee of the Managing Agent; 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 as follows:

(i) A pro forma operating statement (the "Budget") of "Basic Expenses" (as that term is defined in subparagraph 5.3(c) below) for the Property for each Fiscal Year, which operating statement shall be distributed to Owners not less than sixty (60) days before the beginning of each Fiscal Year, except the first Fiscal Year, with respect to which the Budget shall be distributed as soon as reasonably possible.

(ii) A balance sheet as of the accounting date which is the last day of a calendar month closest in time to six (6) months from the Starting Date and an operating statement for the period from the Starting Date to such accounting date, which balance sheet and operating statement shall be distributed to Owners within sixty (60) days after such accounting date.

(iii) 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 Paragraph 5 hereof and Subparagraph 2.3, 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.

(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 Managing Agent provided for in Paragraph 4.3 below.

4.3 Authority and Duty to Engage Managing Agent. 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 Managing Agent for the Property and for the operation of the project pursuant to a written agreement (the "Management Agreement") meeting the requirements of this Subparagraph 4.3. Each Management Agreement shall:

(a) Authorize and obligate the Managing Agent to perform all the duties and obligations of the Association specified in Subparagraph 4.2 above; provided, however, that the Managing Agent may delegate its authority and responsibilities to one or more sub-agents for such periods and upon such terms as the Managing Agent deems proper, subject to the limitations set forth in Subparagraph 4.4 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) Upon the request to do so by the vote or written request of two-thirds (2/3) of the members of the Association.

(c) Provide that the Managing Agent may resign only upon compliance with the following conditions:

(i) The Managing Agent shall have given at least sixty (60) days prior written notice to the Association.

(ii) Prior to or at the expiration of the period of such notice (not less than sixty (60) days) the Association shall have entered into a management agreement with another management firm meeting the requirements of this Subparagraph 4.3 of this Agreement or shall have made a determination to discharge the duties delegated to Managing Agent hereunder with its own personnel; provided, however, that if the Association shall fail to make reasonable efforts to meet the foregoing requirements during such sixty (60) day period, Managing Agent's resignation shall be effective at the end of such sixty (60) day period. If the Association has made reasonable efforts during such sixty (60) day period to satisfy such requirements and has not entered into such a managing agreement or determined to discharge the duties delegated to Managing Agent hereunder with its own personnel, and thereafter continues to use reasonable efforts to discharge such requirements, the resignation of the Managing Agent shall not be effective until such a new management agreement is entered into between the Association and a new management firm or the Association has determined to discharge such duties with its own personnel.

(iii) On or before the effective date of the Managing Agent's resignation, the Managing Agent shall turn over all books and records relating to the management and operation of the Property.

The first Managing Agent (the "Manager") shall be appointed by Declarant and may be Declarant or an affiliate of Declarant.

4.4 Limitation On Powers of the Association and the Managing Agent. Notwithstanding the powers of the Association as set forth in Subparagraphs 4.1 and 4.2, neither the Association (nor the Managing Agent 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 for the operation 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:

(a) The Management Agreement.

(b) 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.

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

(d) A lease of Common Furnishings.

4.5 Limited Liability. Neither the Association nor the Managing Agent 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.

5.1 Creation of Personal Obligations for Assessments.

Declarant, for each Share owned by it [for purposes of this Paragraph 5, Declarant shall be considered to be the Owner of that number of Shares equal to the difference between 50 times the number of Units completed and ready for use in which at least one share has been sold or conveyed and the number of Shares subject to Purchase Agreements accepted by Declarant or conveyed to third-parties by Original Deed], hereby covenants, and each Owner executing a Purchase Agreement or accepting the conveyance of a Share, whether or not it shall be so expressed in the Original Deed, shall be deemed to have covenanted

and agreed, for each Share owned, to pay to the Association the Basic Assessment, all Special Assessments and Personal Charges, as hereinafter described in Subparagraphs 5.3, 5.5, 5.7 and 5.8, respectively (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. Each Owner shall execute, at the time of his purchase of a share, a Notice of Lien for all assessments and charges assessed or to be assessed to the Owner or against his share which may be immediately recorded by The Association. In lieu thereof, the recording of this Agreement shall be deemed to establish the lien for all assessments and charges assessed or to be assessed to all Owners or against their shares. In addition, the Association may record Notices of Lien, executed by it, with respect to assessments and charges not paid by Owners when due, as provided in Paragraph 6.2(b), but such notices shall not affect the validity of the lien provided for in this paragraph. The personal obligation for delinquent Assessments shall not pass to successors-in-title unless expressly assumed by them. 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.

5.2 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 Property, 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.

5.3 Additional Definitions Related to Assessments. As used herein, "Basic Expenses" means the estimated aggregate amount of expenses, as set forth in the Budget, to be incurred by the Association during the applicable Fiscal Year (i) to operate, manage, maintain, improve and repair the

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Property, 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 Managing Agent. 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 Property, 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 or the Declaration; any liability whatsoever for loss or damage arising out of or in connection with the Property, or any fire, accident, or nuisance therein; cost of repair, reinstatement, rebuilding and replacement of the Property, 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 Property. Basic Expenses shall not include any expense constituting a Personal Charge. The Reserve Expenses portion of the Budget shall consist of specific items and amounts for which such Reserve Expenses are being collected.

5.4 Increase and Reduction of Budget. In the event it shall be determined that the Budget is or will be inadequate to meet all expenses incurred by the Association for such Fiscal Year, the Board shall have the authority to cause to be prepared and distributed to each Owner a supplemental Budget and 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 Board 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 Board 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 Subparagraph 5.5 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.

5.5 Basic Assessment. On a Fiscal Year basis, 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 Subparagraph 5.5 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.

5.6 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 shall pay the 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 Subparagraph 4.2(i).

5.7 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 Subparagraph 5.5 (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 (10%) percent 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 payable within fifteen (15) days after receipt of a statement therefor.

5.8 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 operational 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 By-Laws or the Rules and Regulations. For purposes of this Subparagraph 5.8, 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, operational 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 Subparagraph 5.8(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.

6. Enforcement of Restrictions.

6.1 In General. In the event that any Owner or his Permitted User(s) fail to comply with any of the provisions of this Agreement, the Declaration, the By-Laws, 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 By-Laws, 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 By-Laws, 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 (18%) percent 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 Paragraph 6 and elsewhere in this Agreement.

6.2 Certain Specific Enforcement Powers. In amplification of, and not in limitation of, the general powers specified in Subparagraph 6.1 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 By-Laws or the Rules and Regulations, subject to the limitations hereinafter in this Subparagraph 6.2(a) set forth, 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 Board at which a quorum of the Board is present, duly called and held for such purpose in the same manner as provided in the By-Laws for the noticing, calling and holding of a meeting of the Board. 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 fifteen (15) days prior to the holding of such meeting. Such notice shall be given as provided at Paragraph 8.4 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 Board 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 Paragraph 5.1, 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 By-Laws 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 (18%) percent 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 elect to 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 a notice of the 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 thereon 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 By-Laws, 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.

6.3 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.

7.1 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 Property, or the Common Furnishings other than by ordinary wear and tear, the Association shall, subject to the provisions of Subparagraph 7.2, 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 Subparagraph 7.2 and the next succeeding sentence, levy a Special Assessment, in accordance with Subparagraph 5.7, 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 Subparagraph 5.8 above.

7.2 Extensive Damage or Destruction. In the event the amount of the Special Assessment which is required to be levied pursuant to Paragraph 7.1 above, shall exceed twenty (20%) percent 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 Property, pursuant to subparagraph 8.2(a) below, and the recordation of a document stating that this Agreement has been terminated in accordance with the provisions of this Subparagraph 7.2. 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 Property; 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.

7.3 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 Property 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 Property; 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.

8.1 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 held by Class "A" and Class "B" members, pursuant to Paragraph 3.4, except that any amendment changing the number of shares of which Declarant is considered to be the Owner pursuant to Paragraph 5.1 and any amendment to this paragraph 8.1, shall not be effective unless approved by Declarant.

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 Subparagraph 8.1(a) above) or by any two officers of the Association, which amendment shall be effective upon mailing to Owners or recording in the Salt Lake County Recorder's Office.

8.2 Termination. Subject to the provisions of Subparagraph 7.2 and Subparagraphs 8.2(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 successive periods of ten (10) years each.

(a) Should the Owners determine, in their best interests, this Agreement may be terminated by the vote or written assent of 75% of the members of the Association electing to terminate the Agreement and authorizing the Association to sell the Units, with respect to which this Agreement has not been terminated by Declarant, pursuant to Paragraph 8.3, in which event this Agreement shall terminate upon the consummation of such sale and the recordation of an amendment stating that this Agreement is terminated pursuant to Subparagraph 8.2(b). The proceeds from such sale 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, of all sums 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 the Units pursuant to this Paragraph 8.2. 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. The special power of attorney is coupled with an interest, irrevocable and binding on the successors and assigns of each Owner.

8.3 Partial Termination. Declarant may terminate this Agreement with respect to any Unit, in which no Share has been sold or conveyed, and withdraw such Unit from the Share operation, up to a maximum of 13 One Bedroom Units and 105 Studio Units.

8.4 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 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 Property. Notices to the Association shall be addressed to the address designated by the Association by written notice to all owners. Notices to the Managing Agent shall be addressed to the address designated by the Managing Agent by written notice to all Owners. Notices to Declarant shall be addressed to:

KTS
1200 Continental Bank Building
Salt Lake City, Utah 84101

The addresses and addressees for purposes of this Subparagraph 8.4 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.

8.5 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 transferor shall notify the Association in writing and in whatever form, if any, 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 for any purpose, and any action taken by the transferor as an Owner may be recognized by the Association. Prior to receipt of any such notification by the Association or the Managing Agent, 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.

8.6 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.

8.7 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 terminated.

8.8 Interpretation. This Agreement shall be interpreted in accordance with the laws of the State of Utah. The captions of the paragraphs and subparagraphs 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.

8.9 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.

8.10 Execution of Agreement. This Agreement may be signed by the Owners in one or more counterparts, or on separate signature pages for each of the Owners signed and attached hereto, all of which shall be taken together to form one master agreement.

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9. Legal Description. The Property 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.

10. Relationship to Declaration. All Units of The Kimball Condominiums are subject to the Declaration and the Owners of such Units have certain rights and obligations pursuant thereto. All Owners hereby appoint the Association as their agent and attorney-in-fact to represent their interests and to cast their votes with respect to any matter pursuant to the Declaration unless and until a majority of all of the Owners of all of the undivided interests in a particular Unit, by written document executed by a majority of such Owners, appoint some other party to represent their interests and to cast their votes pursuant to the Declaration. All assessments to be paid pursuant to the Declaration shall be included in the assessments made and to be paid under this Agreement.

IN WITNESS WHEREOF the parties hereto have signed or caused the names of their duly authorized officers or agents to be signed hereunder.

KATHLEEN L. LAGON
REGISTRAR
SALT LAKE COUNTY
UTAH
MAR 29 2 40 PM '82
BACKMAN P.S. & TIT.L.
REF
[Signature]
107th

KTS,
a Utah corporation,

By *Merlyne Hanks*
Secretary

STATE OF UTAH)
) SS
County of Salt Lake)

On the 5th day of February, 1982, personally appeared before me *Merlyne Hanks*, who being by me duly sworn did say that he is the *Secretary* of KTS, a Utah corporation, and that he executed the within instrument on behalf of said corporation by authority of a resolution of its board of directors, and duly acknowledged to me that said corporation executed the same.

Juanita O. Thompson
NOTARY PUBLIC
Residing at Salt Lake City, Utah.

My commission expires 02-01-86

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