

WHEN RECORDED, RETURN TO:
Robert C. Hyde
Parsons, Behle & Latimer
P.O. Box 11898
185 South State Street, Suite 700
Salt Lake City, Utah 84147

DEC 5 2 57 PM '83

KATHIE L. DIXON
RECORDER
SALT LAKE COUNTY,
UTAH

2078
Boeckman, T.H.
of...

3877149

FIRST AMENDMENT TO
AMENDED AND RESTATED
USE AND OCCUPANCY AGREEMENT

This First Amendment is made and entered into this 30th day of November, 1983, by BERTAGNOLE PROPERTIES, a Utah general partnership (hereinafter referred to as the "Declarant"), for the purpose of amending in part that certain Amended and Restated Use and Occupancy Agreement dated May 3, 1983 and recorded the same day with the Salt Lake County Recorder as Entry No. 3788556, Book 5456, beginning at Page 560 (the "Use and Occupancy Agreement").

The Declarant, being the owner of all of the property described in Exhibit "A" attached hereto and incorporated herein by this reference, hereby declares that the Use and Occupancy Agreement is hereby amended in part as follows:

1. Section 5.05 of the Use and Occupancy Agreement is hereby amended and restated in its entirety as follows:

5.05 Basic Assessment. Each Fiscal Year the Basic Assessment attributable to each Share shall be determined in the following manner, and thereafter assessed to and paid by the Owner of said Share. The total Basic Expenses incurred in such Fiscal Year shall be divided into three parts, with one part

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SLC 56727

pertaining to all two bedroom Shares, one part pertaining to all one bedroom Shares, and one part pertaining to all studio Shares. This division between the three Unit Types shall be made in such a ratio that the total Basic Expenses attributable to all one bedroom Shares will be one and two-thirds times the total amount attributable to all studio Shares, and the total Basic Expenses attributable to all two bedroom Shares will be two and one-third times the total amount attributable to all studio Shares. After dividing the Basic Expenses for each Fiscal Year into the three parts as explained above, that part pertaining to each Unit Type shall be divided by the number of Shares of that particular Unit Type, thus resulting in the Basic Assessment to be made to the Owner of each Share in the Project. Notwithstanding the preceding portions of this paragraph, the initial Basic Assessment for each Share shall be prorated according to the following formula: The Basic Assessment as calculated pursuant to the formula set forth in the preceding portions 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 (for contract buyers) or on the date of recordation of the Owner's Original Deed (for cash buyers), and (ii) the denominator of which is 365.

2. Sections 5.09(a) and 5.09(b) are hereby amended and restated in their entirety as follows:

(a) With respect to fixed costs and expenses, the same shall be divided among Declarant and all Owners based on the number of Shares each owns in the Project (which is the same manner of division as already required by the preceding sections of this Section 5), 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

Shares in the North Building shall constitute the total Shares 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 number of Shares each owns in the project, but for the 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, cost of employees, cost 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.

3. A new Section 5.09(c) as follows is hereby made an addition to the Use and Occupancy Agreement:

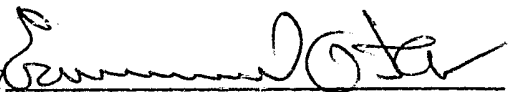
(c) Notwithstanding the provisions of Sections 5.09(a) and 5.09(b) above, if Declarant determines during the early development of the project that the Basic Assessment attributable to each Owner of a Share, as calculated above, is too high in comparison with the annual assessments of other comparable timeshare projects, then Declarant may assess each Owner an amount less than what would otherwise be owing under the preceding paragraphs of this Section 5, and Declarant shall pay the difference so that the costs of the project will be met.

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IN WITNESS WHEREOF, the Declarant has executed this
First Amendment 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

FRANKLIN FINANCIAL, a Utah
corporation,
Its General Partner

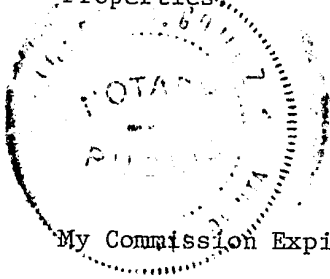
By 
RICHARD A. CHRISTENSON,
Its president

4838C

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

On the 1st day of December, 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, which limited partnership is a general partner of Bertagnole Properties, that said instrument was signed in behalf of said partnership by authority of a resolution of the partners of the partnership, and said Emanuel A. Floor acknowledged to me that said Bertagnole Investment Company Limited Partnership executed the same as the general partner of Bertagnole Properties.

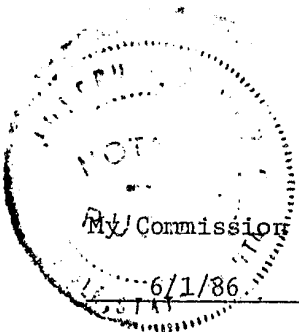


Joseph D. Long
NOTARY PUBLIC
Residing at: Midvale, Utah

My Commission Expires:
6/1/86

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

On the 1st day of December, 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 that is one of the general partners of Bertagnole Properties, and that said instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors, and said Richard A. Christenson acknowledged to me that said corporation executed the same as the general partner of Bertagnole Properties.



Joseph D. Long
NOTARY PUBLIC
Residing at: Midvale, Utah

My Commission Expires:
6/1/86

EXHIBIT "A"

THE KIMBALL CONDOMINIUMS

Unit Designation

Par Value

Undivided Interest
in Common Areas
and Facilities

105	3	.92596
106	3	.92596
107	2	.61728
108	2	.61728
109	2	.61728
110	2	.61728
111	2	.61728
112	2	.61728
113	3	.92596
114	2	.61728
115	2	.61728
117	2	.61728
118	2	.61728
119	2	.61728
120	2	.61728
121	2	.61728
122	2	.61728
123	2	.61728
124	2	.61728
125	2	.61728
126	2	.61728
127	2	.61728
128	2	.61728
129	2	.61728
130	2	.61728
131	2	.61728
132	2	.61728
133	2	.61728
134	2	.61728
136	2	.61728
137	2	.61728
138	2	.61728
139	3	.92596
140	2	.61728
142	2	.61728
143	3	.92596
144	2	.61728
146	2	.61728
147	2	.61728
205	3	.92596
206	3	.92596
207	2	.61728
208	2	.61728
209	2	.61728
210	2	.61728
211	2	.61728
212	2	.61728
213	3	.92596
214	2	.61728

EXHIBIT "A" CONTINUED

<u>THE KIMBALL CONDOMINIUMS</u>	<u>Unit Designation</u>	<u>Par Value</u>	<u>Undivided Interest in Common Areas and Facilities</u>
	215	2	.61728
	217	2	.61728
	218	2	.61728
	219	2	.61728
	220	2	.61728
	221	2	.61728
	222	2	.61728
	223	2	.61728
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	238	2	.61728
	239	3	.92596
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	243	3	.92596
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	305	3	.92596
	306	3	.92596
	307	2	.61728
	308	2	.61728
	309	2	.61728
	310	2	.61728
	311	2	.61728
	312	2	.61728
	313	3	.92596
	314	2	.61728
	315	2	.61728
	317	2	.61728
	318	2	.61728
	319	2	.61728
	320	2	.61728
	321	2	.61728
	322	2	.61728
	323	2	.61728
	324	2	.61728
	325	2	.61728
	326	2	.61728

EXHIBIT "A" CONTINUED

<u>THE KIMBALL CONDOMINIUMS</u>	<u>Unit Designation</u>	<u>Par Value</u>	<u>Undivided Interest in Common Areas and Facilities</u>
	327	2	.61728
	328	2	.61728
	329	2	.61728
	330	2	.61728
	331	2	.61728
	332	2	.61728
	333	2	.61728
	334	2	.61728
	335	2	.61728
	336	2	.61728
	337	2	.61728
	338	2	.61728
	339	3	.92596
	340	2	.61728
	342	2	.61728
	343	3	.92596
	344	2	.61728
	346	2	.61728
	347	2	.61728
	348	2	.61728
	413	3	.92596
	415	2	.61728
	417	2	.61728
	418	2	.61728
	419	2	.61728
	420	2	.61728
	421	2	.61728
	422	2	.61728
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	431	2	.61728
	432	2	.61728
	433	2	.61728
	434	2	.61728
	435	2	.61728
	436	2	.61728
	437	2	.61728
	438	2	.61728
	439	3	.92596
	440	2	.61728
	442	2	.61728
	443	3	.92596
	444	2	.61728
	446	2	.61728
	447	2	.61728
	448	2	.61728
		<u>324</u>	<u>100.00000</u>