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KATIE L. DIXON  
RECORDER, SALT LAKE COUNTY, UTAH  
WAYNE G. PETTY  
REC BY: REBECCA GRAY, DEPUTY

WHEN RECORDED RETURN TO:

Wayne G. Petty, Esq.  
MOYLE & DRAPER  
15 East 100 South  
Suite 600  
Salt Lake City, Utah 84111

APPROVED

MAR 07 1989

CITY RECORDER

FOURTH AMENDMENT TO THE SECOND AMENDED  
DECLARATION OF CONDOMINIUM  
OF THE  
KIMBALL CONDOMINIUMS, a Condominium Project  
AND  
THIRD AMENDMENT TO AMENDED AND RESTATED  
USE AND OCCUPANCY AGREEMENT

THIS FOURTH AMENDMENT TO THE SECOND AMENDED DECLARATION  
OF CONDOMINIUM OF THE KIMBALL CONDOMINIUMS, AND THIRD  
AMENDMENT TO AMENDED AND RESTATED USE AND OCCUPANCY  
AGREEMENT (collectively, this "Fourth Amendment"), is made and entered into  
as of February 27, 1989, by the Kimball Condominium Owners  
Association, a Utah non-profit corporation (the "Association"), on behalf of itself  
and as attorney-in-fact for the Owners of Units in the Kimball Condominium  
Project in Salt Lake City, Salt Lake County, Utah.

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 on Exhibit "A" attached hereto (the

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"Property") to the provisions of the Utah Condominium Ownership Act, Utah Code Ann. Sections 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 5247 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

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:

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<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 1049
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

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. 80C-02890 (the "Bankruptcy Case"); and

WHEREAS, pursuant to that certain Third Amended Plan Of Reorganization filed in the Bankruptcy Case on November 18, 1988, by the Association and First Federal of Pittsburgh (the "Plan"), which 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, has been authorized to amend the Second Amended Declaration, as Amended, and the Amended Use and Occupancy Agreement, as 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, is authorized, to record and, simultaneously with the recording of this Fourth Amendment is recording that certain Amended and Restated Survey Map of the Kimball Condominiums, with the Salt Lake County, Utah, Recorder (the "Amended Survey Map"), which shall supersede and replace in its entirety all previously recorded Record of Survey Maps with respect to the Property; and

WHEREAS, the Association and the Timeshare Purchasers, and their respective 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 Amended Survey Map, and this Fourth Amendment.

NOW, THEREFORE, in consideration of the premises and pursuant to the Plan and the Order, the Association, on behalf of itself and as attorney-in-fact for the Timeshare Purchasers, hereby declares, covenants and agrees that the

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Property and each part thereof shall be held, encumbered, occupied, built on and otherwise used and improved, maintained, leased, sold, conveyed and otherwise transferred subject to covenants, conditions, restrictions, reservations, easements, liens and charges which are set forth in the Second Amended Declaration, as Amended, the Amended Use and Occupancy Agreement, as Amended, the Amended Survey Map, and this Fourth Amendment, all of which shall (i) attach to and run with the land, (ii) be binding on the Property and all owners, lessees and other parties having, acquiring or otherwise at any time possessing any right, title or interest in or to the Property or any part thereof, or the right to use or occupy the Property or any part thereof, (iii) inure to the benefit of said owners, lessees and other parties, and (iv) be for the purpose of continuing and establishing a general plan for the operation and maintenance of the Property as an attractive condominium development.

## ARTICLE I

### Definitions; Controlling Provisions; South Building

Section 1.1. Unchanged Definitions. Unless otherwise specified herein, all terms used herein and defined in the Second Amended Declaration, as Amended, and the Amended Use and Occupancy Agreement, as Amended, shall have the meanings ascribed to them in said instruments.

Section 1.2. Back Building Units. "Back Building Units" shall mean and refer to the following Units as shown on the Amended Survey Map: 125, 129, 130, 133, 225, 226, 230, 233, 325, 326, 330, 333, 425, 426, 430 and 433.

**Section 1.3. Common Areas and Facilities. "Common Areas and Facilities" shall mean and refer to:**

- (i) The land underlying the Property;**
- (ii) That portion of the Property not specifically included in the Units;**
- (iii) All foundations, columns, girders, beams, supports, main walls, roofs, lobbies, stairs, stairways, fire escapes, service areas, entrances and exits, and driveways, and in general all other apparatus, installations and other parts of the Property (excluding the Units) necessary or convenient to the existence, maintenance and safety of the Common Areas and Facilities or normally in common use;**
- (iv) Those areas specifically designated on the Amended Survey Map as "Common Areas"; and**
- (v) All Common Areas and Facilities as defined in the Act, whether or not specifically listed herein.**

**Section 1.4. Convertible Land. "Convertible Land" shall mean and refer to that portion of the Property described as Exhibit "B" attached hereto.**

**Section 1.5. Uncompleted Units. "Uncompleted Units" shall mean and refer to the following Units on the Amended Survey Map the Back Building Units, and Unit Nos. 138, 139, 143, 144 and 244.**

**Section 1.6. Unit. "Unit" shall mean and refer to the spaces designated on the Amended Survey Map as a Unit.**

**Section 1.7. Unit Number. "Unit Number" shall mean and refer to the number, letter, or combination thereof designating the Unit as shown on the Amended Survey Map and Exhibit "C" attached hereto.**

Section 1.8. Fourth Amendment and Amended Survey Map Control. In the event of any conflict or inconsistency between the terms of this Fourth Amendment and the terms of the Second Amended Declaration, as Amended, or the Amended Use and Occupancy Agreement, as Amended, the terms of this Fourth Amendment shall control. The Amended Survey Map supersedes and replaces in its entirety all previously recorded Record of Survey Maps with respect to the Property.

Section 1.9. South Building. All references and provisions contained in the Second Amended Declaration, as Amended, pertaining to the "south building" are stricken and of no further force or effect, and this Fourth Amendment shall completely govern the ownership of and restrictions upon the property comprising said south building, which has been redesignated herein as Convertible Land.

## ARTICLE II

### Undivided Ownership Interest in Common Areas And Facilities; Uncompleted Units

Section 2.1. 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 "D" attached hereto.

Section 2.2. Uncompleted Units. Notwithstanding any provision in the Second Amended Declaration, as Amended, or the Amended Use and Occupancy Agreement, as Amended, each of the Uncompleted Units, until such Units are completed, shall only be allocated, and the Owner thereof shall only be obligated to pay, their respective pro rata shares (based on the undivided ownership interest in Common Areas and Facilities appurtenant to each such Uncompleted Unit) of

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the following Common Expenses: real property taxes and assessments, insurance, and security. Once each such Uncompleted Unit is completed, it shall be allocated, and the Owner thereof shall thereafter be obligated to pay, its respective pro rata share (based on the undivided ownership interest in Common Areas and Facilities appurtenant to such previously Uncompleted Unit) of all Common Expenses.

### ARTICLE III

#### Back Building Units

Section 3.1. Reconfiguration. At any time prior to the completion of the Back Building Units, the Association reserves the right to alter the configuration and design of the Back Building Units, and to alter the boundaries between the Back Building Units, as long as said alteration does not affect the boundaries of any other Units. Any such alteration shall be effected by an amendment to this Fourth Amendment and the Amended Record of Survey Map, which may be executed by the Association and any affected lienholders with respect to the Project, notwithstanding the amendment provisions contained in Section 24 of the Second Amended Declaration. Any such amendment shall not affect the extent and priority of liens on the Project of said lienholders without said lienholders' prior written consent.

Section 3.2. Change In Undivided Ownership Interest In Common Areas and Facilities. Any alteration made to the Back Building Units under Section 3.1 hereof may increase or decrease the number of the Back Building Units and alter said Units' respective undivided ownership interests in Common Areas and Facilities. If the undivided ownership interests in Common Areas and Facilities for the Back Building Units are changed, the amendments to this Fourth Amendment and the Amended Survey Map described in Section 3.1 hereof shall



reapportion the undivided ownership interests in the Common Areas and Facilities which are allocated to the altered Units, consistent with the manner in which the undivided ownership interests in the Common Areas and Facilities were originally determined.

#### ARTICLE IV

##### Convertible Land

**Section 4.1. Development of the Convertible Land.** The Association reserves the right, without any requirement that it obtain the prior consent of the other Owners of Units, to develop all or a portion of the Convertible Land to condominiums, without any limitation, except the following:

(i) The number of units to be constructed on the Convertible Land shall not exceed the number of said units intended to be constructed in the "south building" as described in the Second Amended Declaration;

(ii) The gross floor area of all units to be constructed on the Convertible Land shall not exceed the gross floor area of all of the units intended to be constructed in the "south building" as described in the Second Amended Declaration;

(iii) Any structure erected on the Convertible Land will be compatible with structures on other portions of the Property in terms of quality of construction, the principal materials to be used, and architectural style;

(iv) No other improvements may be made to the Convertible Land other than those types of improvements intended to be constructed in the "south building" as described in the Second Amended Declaration;

(v) The units constructed on the Convertible Land may not be, at the Association's discretion, substantially identical to Units on other portions of

the Property, provided that said units otherwise comply with the terms of this Section 4.1 and that the type of said units may include one or more of the following: units designed for nightly or other periodic rentals; units designed for commercial purposes necessary or desirable for the overall operation of the Project; units designed for future timeshare sales; and units designed for typical condominium sales.

(vi) The option to develop the Convertible Land may not be exercised unless additional parking has been secured for Owners of Units or is incorporated into the buildings to be constructed thereon, in a manner that is acceptable to Salt Lake City Corporation and consistent with the then-current zoning ordinances of Salt Lake City.

**Section 4.2. Interim Use of the Convertible Land for Parking Lot Purposes.** Until the Association's exercise of the option described in Section 4.1 hereof, the Association, Owners and their respective guests and invitees shall be entitled to use the parking lot currently located on the Convertible Land for parking purposes, subject to reasonable rules and regulations established by the Association, provided that the Association and Owners of Units shall be responsible for paying the Common Expenses allocable to the use of the Convertible Land as a parking lot.

## **ARTICLE V**

### **Miscellaneous**

**Section 5.1. Extension of Time for Sales Program.** Notwithstanding the terms of Section 25 of the Second Amended Declaration, the expiration of the period during which the Association may maintain its sales program for Units shall be March 31, 1998.

Section 5.2. Service of Process. The person authorized to receive service of process, under all cases provided by the Act, together with his place of business, is as follows:

Wayne G. Petty, Esq.  
MOYLE & DRAPER  
15 East 100 South  
Suite 600  
Salt Lake City, Utah 84111

Section 5.3. In All Other Respects, Instruments Are Deemed Unamended. Except as set forth herein, the Second Amended Declaration, as Amended, and the Amended Use and Occupancy Agreement, as Amended, are unamended and are in full force and effect in accordance with the terms thereof.

IN WITNESS WHEREOF, the undersigned has hereunto caused this Fourth Amendment to be executed by its duly authorized agent, on behalf of itself and its attorney-in-fact for all Timeshare Purchasers, pursuant to the Plan and Order, this 27 day of February, 1989.

KIMBALL CONDOMINIUM OWNERS ASSOCIATION,  
a Utah non-profit corporation

By Renee Maxwell  
Its Authorized Agent

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

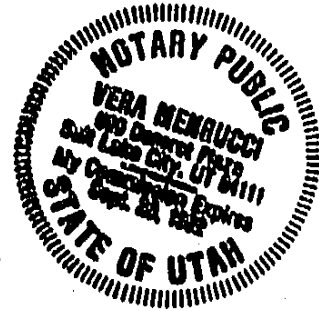
On the 27<sup>th</sup> day of February, 1989, personally appeared before me Renee Maxwell, who being by me duly sworn did say

that s he is the authorizing agent of Kimball Condominium Owners Association, a Utah non-profit corporation, the corporation and that executed the above and foregoing instrument and that said instrument was signed in behalf of said corporation by authority of its bylaws, on behalf of itself and as attorney-in-fact for the Timeshare Purchasers and said Verna Rasmussen acknowledged to me that said corporation executed the same.

Verna Rasmussen  
Notary Public  
Residing at Salt Lake County, UT

My Commission Expires:

9-20-92



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LIST OF EXHIBITS

- Legal Description of the Property .....Exhibit "A"  
Legal Description of the Convertible Land ..... Exhibit "B"  
List of Units Numbers .....Exhibit "C"  
List of Undivided Ownership Interests In Common  
Areas and Facilities Appurtenant To Each Unit .....Exhibit "D"

//CDJ/Kimball4Am

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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 0°02'13" E, 99.0 feet to the Point of Beginning, containing 0.932 Acres together with and subject to a 10 foot right-of-way 5 feet on each side and parallel to the north property line.

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Beginning at an existing fence corner S 0°02'13" E, 34.72 feet, and N 89°57'47" E, 8.31 feet, from the Southwest corner of Lot 4, Block 93, Plat A, Salt Lake City Survey (Basis of Bearing being S 0°02'13" E between the existing city monuments at 200 North Main Street and North Temple and Main Streets); thence N 1°25' W, 63.8 feet, more or less, to a point on a retaining wall made of railroad ties; thence S 89°52' E, along said retaining wall, 213.8 feet, more or less to a corner of said retaining wall; thence, continuing along said retaining wall, S 0°08' W, 65.7 feet, more or less, to a point in an existing fence line; thence N 89°21' W, along said fence line, 212.1 feet, more or less, to the point of beginning. Containing 0.32 acres, more or less.

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Unit Designation

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BOX 6110 PCE 320



Unit Designation

Undivided Interest in Common  
Areas and Facilities

125	.021
129	.021
130	.025
133	.021
134	.025
137	.015
138	.029
139	.021
143	.021
144	.021
225	.029
226	.025
230	.025
233	.029
234	.025
237	.015
238	.029
239	.021
243	.021
244	.021
325	.029
326	.025
330	.025
333	.029
334	.025
337	.015
338	.029
339	.021
343	.021
344	.021
347	.015
348	.015
425	.029
426	.025
430	.025
433	.029
434	.025
437	.015
438	.029
439	.021
443	.021
444	.021
447	.015
448	.015

44 UNITS

TOTAL 1.000

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APPROVAL BY CITY

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

DATED: MAR 07 1989

APPROVED

SALT LAKE CITY

MAR 07 1989

CITY RECORDER

By

Mayor

*Robert A. DePaulis*

ATTEST:

*Debra M. ...*



APPROVED AS TO FORM  
Salt Lake City Attorney's Office

Date

by

*3/7/89*  
*[Signature]*