

RECORDED

JUN 02 1994

WHEN RECORDED RETURN TO:

Wayne G. Petty, Esq.  
MOYLE & DRAPER, P.C.  
600 Deseret Plaza  
15 East 100 South  
Salt Lake City, UT 84111

CITY RECORDER

5840857 84.00  
06/03/94 11:28 AM  
KATIE L. DIXON  
RECORDER, SALT LAKE COUNTY, UTAH  
KIMBALL CONDOMINIUM  
OWNERS ASSOCIATION

RECORDED BY DEPUTY - WE  
*K. Gray*

5840857

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

THIS FIFTH AMENDMENT TO THE SECOND AMENDED DECLARATION  
OF CONDOMINIUM OF THE KIMBALL CONDOMINIUMS AND FOURTH AMENDMENT  
TO AMENDED AND RESTATED USE AND OCCUPANCY AGREEMENT,  
(collectively "Fifth Amendment"), is made and entered into this  
27<sup>th</sup> day of May, 1994, by the Kimball Condominium Owners  
Association, a Utah non-profit corporation (the "Association").

WITNESSETH:

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

Beginning at the SW corner of Lot 4, Block 93, Plat A,  
Salt Lake City Survey, thence S 0°02'13" E, 37.25 feet;

thence N 89°57'47" E, 298.0 feet; thence N 0°02'13" W, 136.25 feet; thence S 89°57'47" W, 298.0 feet; thence S 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.

(the "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 5347 Beginning at Page 1092
Second Amendment to the Second Amended Declaration	12/1/83	Recorded 12/5/83 Entry No. 3877150 Book 5512 Beginning at Page 1056
Third Amendment to the Second Amended Declaration	7/3/84	Recorded 8/31/84 Entry No. 3987819 Book 5586 Beginning at Page 2427
Fourth Amendment to the Second Amended Declaration ("Fourth Amendment")	2/27/89	Recorded 3/14/89 Entry No. 4746199 Book 6110 Beginning at Page 355

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

WHEREAS, pursuant to that certain Amended and Restated Use and Occupancy Agreement dated May 3, 1983, recorded on May 3,

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

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

<u>Instrument</u>	<u>Date</u>	<u>Recording Information</u>
First Amendment to Amended and Restated Use and Occupancy Agreement	11/30/83	Recorded 12/5/83 Entry No. 3877149 Book 5512 Beginning at Page 1048
Second Amendment to Amended and Restated Use and Occupancy Agreement	7/3/84	Recorded 8/31/84 Entry No. 3987818 Book 5586 Beginning at Page 2421
Third Amendment to Amended and Restated Use and Occupancy Agreement	2/72/89	Recorded 3/14/89 Entry No. 4746199 Book 6110 Page 355

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

WHEREAS, subsequent to recordation of the Second Amended Declaration, as Amended, and the Amended Use and Occupancy Agreement, as Amended, all of Franklin's right, title and interest in and to the property and as "Declarant" under the Second Amended Declaration, as Amended, and the Amended Use and Occupancy Agreement, as Amended, was transferred, conveyed and

assigned by mesne instruments of record to Kimball Associates, Inc., a Utah corporation ("Debtor"); and

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

WHEREAS, pursuant to that certain Third Amended Plan of Reorganization filed in the Bankruptcy Case on November 18, 1988 (the "Plan"), by the Association and First Federal of Pittsburgh, which Plan was confirmed by order of the United States Bankruptcy Court for the District of Utah, Central Division, entered on December 22, 1988 (the "Order"), all of the right, title and interest of Debtor in and to the Property, and as "Declarant" under the Second Amended Declaration, as Amended, and the Amended Use and Occupancy Agreement, as Amended, was transferred, conveyed and assigned to the Association, subject to the rights of certain "Timeshare Purchasers" and other liabilities, as defined and described in the Plan; and

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

WHEREAS, pursuant to the Plan and the Order, the Association, on behalf of itself and as the attorney-in-fact for

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

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

NOW, THEREFORE, in consideration of the premises and pursuant to the Plan and the Order, as authorized by the Plan and Order, and pursuant to Sections 3.1 and 3.2 of the Fourth Amendment which amended the original Kimball Condominiums Record

of Survey Map, by executing this Fifth Amendment and the Second Amended Supplemental Record of Survey Map of the Kimball Condominiums ("Second Amended Map"), and pursuant to Section 57-8-13.4 of the Condominium Ownership Act, the Association as successor Declarant hereby designates the completion, configuration, and undivided interests of certain "Back Building Units" as referred to in the Fourth Amendment and as shown on the Second Amended and Restated Record of Survey Map as "Units for Possible Reconfiguration."

#### ARTICLE I

Pursuant to this Fifth Amendment to the Second Amended Declaration of Condominium and Fourth Amendment to Amend and Restated Use and Occupancy Agreement the following identified Sections are hereby re-coded, amended, added or deleted.

1.1 The following items in this Section 1.1 affect the Second Amended Declaration, as amended, including through the Fourth Amendment.

A. Section 1.1 in the Fourth Amendment, "Unchanged Definitions" is hereby deleted.

B. Section 1.2 in the Fourth Amendment, "Back Building Units" is hereby re-coded as Section 2(t) under the Second Amended Declaration and amended to read:

(t) The term "Back Building Units" shall mean and refer to the following units as shown on the Second Amended Supplemental Record of Survey Map for The Kimball Condominiums: 325, 326, 330, 333, 425, 426, 430 and 433. Said units are labeled on the survey map as "Units for Possible Reconfiguration."

C. Section 1.3, "Common Area and Facilities," is hereby re-coded as Section 2(c) under the Second Amended Declaration and amended to read:

(c) The term "Common Areas and Facilities" shall mean and refer to:

(i) The land included in the description of the Property, including the Convertible Land;

(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 Second Amended Supplemental Record of Survey Map for the Kimball Condominiums as "Common Areas"; and

(v) All Common Areas and Facilities as defined in the Act, whether or not specifically listed herein.

D. Section 1.4 in the Fourth Amendment, "Convertible Land" is hereby recodified and amended as Section 2(u) under the Second Amended Declaration to read:

(u) The term "Convertible Land" shall mean and refer to that portion of the property described in Exhibit "C" attached to the Fifth Amendment.

E. Section 1.5 in the Fourth Amendment, "Uncompleted Units," is hereby re-coded and amended as Section 2(v) under the Second Amended Declaration to read:

(v) "Uncompleted Units" shall mean the same as Back Building Units. Whenever a document refers to

Back Building Units it also is referring to any units labeled "Units for Possible Reconfigurations" on the latest supplemented Record of Survey Map affecting Kimball Condominiums.

F. Section 1.6 in the Fourth Amendment, "Unit" is hereby re-coded as Section 2(o) under the Second Amended Declaration and amended to read:

(o) The word "Unit" shall mean and refer to the separately owned space as shown on the latest supplemental Record of Survey Map with a unit number.

G. Section 1.7 in the Fourth Amendment, "Unit Number" is re-coded Section 2(p) under the Second Amended Declaration and amended to read:

(p) The words "Unit Number" shall mean and refer to the number, letter, or combination thereof designating the Unit as shown on the Second Amended Supplemental Record of Survey Map for the Kimball Condominiums. Said Unit Numbers are also shown on amended Exhibit C attached hereto.

H. The following is added as Section 2(z) to the Second Amended Declaration:

(z) The term "Order" means order of the United States Bankruptcy Court for the District of Utah, Central Division, entered in the Bankruptcy Case on December 22, 1988, confirming the Plan.

I. Section 2.1 in the Fourth Amended Declaration is hereby re-coded as Section 9(e) and amended to read as follows:

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

J. Section 2.2 in the Fourth Amendment is added as Section 6.1 of the Second Amended Declaration and reads as follows:



Section 6.1. 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 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.

K. Section 3.1 in the Fourth Amendment is added as Section 6.2 of the Second Amended Declaration and is amended to read as follows:

Section 6.2. Reconfiguration. As authorized by the Plan and Order, the Association continues to reserve the right, at any time prior to the completion of the Back Building Units, 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 the Second Amended Declaration or any subsequent Amendment and the Second Amended Map or any subsequent 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.

L. Section 3.1 in the Fourth Amendment is added as Section 6.3 of the Second Amended Declaration and is amended to read as follows:

Section 6.3. Change in Undivided Ownership Interest In Common Areas and Facilities. Any alteration made to the Back Building Units under Section 6.2 of the Second Amended Declaration [as amended by the Fifth Amendment] 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 the Second Amended Declaration described in Section 6.2 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.

1.2 The following items in this Section 1.2 affect the Amended and Restated Use and Occupancy Agreement, as amended, including through the Third Amendment.

A Section 1.25 of the Use Agreement is amended to read:

1.25 "Unit" shall mean and refer to the separately owned space as shown on the latest supplemental Record of Survey Map with a unit number.

## ARTICLE II

### Designation of Completion of Units

Designation of Completion of Units. Pursuant to the provisions of Section 6.2 of the Second Amended Declaration (Section 3.1 of the Fourth Amendment), the Association hereby declares that the following Units have been completed: 125, 129, 138, 139, 143, 144, 225, 226, 230, 233 and 244. Such Units were included as Uncompleted and Back Building Units in the Fourth Amendment. Such Units, by this Fifth Amendment, have been removed from the list of Uncompleted Units and Back Building Units.

ARTICLE IV

Miscellaneous

Section 4.1. 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, P.C.  
600 Deseret Plaza  
No. 15 East 100 South  
Salt Lake City, UT 84111

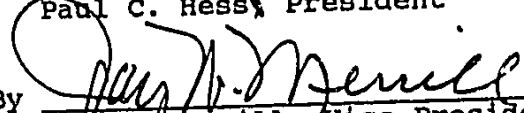
Section 4.2. In All Other Respects, Instruments Are Deemed Unamended; Conflict Among Documents. Except as set forth herein, the Second Amended Declaration, as Amended, and the Amended Use and Occupancy Agreement, as Amended, are unamended and are in full force and effect in accordance with the terms thereof.

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.

IN WITNESS WHEREOF, the undersigned has hereunto caused this Fifth Amendment to be executed by its duly authorized agent, pursuant to the Plan and Order, this 27<sup>th</sup> day of May, 1994.

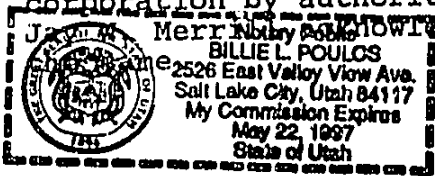
KIMBALL CONDOMINIUM OWNERS ASSOCIATION  
a Utah non-profit corporation

By   
Paul C. Hess, President

By   
Jay W. Merrill, Vice President

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

On the 27<sup>th</sup> day of May, 1994, personally appeared before me Paul C. Hess and Jay W. Merrill, who being by me duly sworn did say that they are the President and Vice President of Kimball Condominiums Owners Association, a Utah non-profit corporation, and that they executed the above and foregoing instrument and that said instrument was signed in behalf of said corporation by authority of its bylaws, and said Paul C. Hess and Jay W. Merrill acknowledged to me that said corporation executed



Billie L. Poulos  
NOTARY PUBLIC  
Residing at: Salt Lake City

My Commission Expires:  
5-22-97

LIST OF EXHIBITS

List of Unit Numbers and Undivided Ownership  
Interests In Common Areas and Facilities  
Appurtenant to Each Unit . . . . . Exhibit "B"  
Legal Description of the Convertible Land . . . . . Exhibit "C"

EXHIBIT B:

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

<u>Unit Designation</u>	<u>Unit Size Square Ft.</u>	<u>Undivided Interest in Common Areas and Facilities</u>
125	471	.022
129	473	.022
130	709	.025
133	242	.015
134	713	.025
137	272	.015
138	835	.029
139	555	.021
143	562	.021
144	553	.021
225	742	.030
226	706	.026
230	693	.026
233	747	.030
234	751	.025
237	284	.015
238	867	.029
239	566	.021
243	580	.021
244	572	.021
325	773	.029
326	749	.025
330	731	.025
333	757	.029
334	771	.025
337	290	.015
338	886	.029
339	584	.021
343	597	.021
344	598	.021
347	300	.015
348	305	.015
425	773	.029
426	749	.025
430	751	.025
433	767	.029
434	766	.025
437	291	.015
438	889	.029
439	586	.021
443	600	.021
444	603	.021
447	299	.015
448	305	.015
		<u>.015</u>
		TOTAL 1.000

EXHIBIT C:  
CONVERTIBLE LAND

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.

APPROVAL BY CITY

SALT LAKE CITY, a body corporate and politic, and the City in which Kemball Condominiums 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: 6/2/94

RECORDED

JUN 02 1994

CITY RECORDER

ATTEST:

*[Signature]*  
\_\_\_\_\_  
Chief Deputy

SALT LAKE CITY

By *[Signature]*  
Acting Mayor

APPROVED AND FORWARDED  
Salt Lake City  
Date *[Signature]*  
By *[Signature]*



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