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KIMBALL TOWERS COMMERCIAL CONDOMINIUM  
Springfield, Massachusetts

MASTER DEED

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KIMBALL TOWERS COMMERCIAL CONDOMINIUM  
Springfield, MassachusettsMASTER DEED

NEIL ZAIS and STEVEN J. WATCHMAKER, as Trustees of Kimball Towers Realty Trust under Declaration of Trust dated July 2, 1984, recorded with Hampden County Registry of Deeds in Book 5645, Page 308, and not individually (hereinafter called the "Sponsor"), being the sole owners of the premises located in Springfield, Hampden County, Massachusetts, described in Paragraph 2 below, do hereby, by duly executing and recording this Master Deed, submit said premises, which together with all easements, rights and appurtenances belonging thereto (herein collectively called the "Property"), to the provisions of Chapter 183A of the General Laws of the Commonwealth of Massachusetts (the "Condominium Law"). Sponsor proposes to create, and does hereby create with respect to the Property, a condominium governed by and subject to the provisions of the Condominium Law.

1. Name of Condominium. The condominium is to be known as Kimball Towers Commercial Condominium (the "Condominium").

2. Description of Premises. The premises of the Condominium includes, in addition to the units and common areas and facilities, the perpetual rights and easements on and upon the parcel of land (herein called the "Building Parcel") more particularly described as the First Parcel in Exhibit A to the Master Deed of the Kimball Towers Residential Condominium (herein called the "Residential Master Deed") recorded herewith, and the building on the Building Parcel (the "Building") situate thereon addressed as and generally known as 140 Bridge Street and 415 Chestnut Street in said Springfield, for purposes of establishing this Condominium on and within the said Building Parcel and Building and its continuance therein, together with all easements, grants and rights provided or made for purposes of construction, reconstruction, alteration and maintenance of the Condominium, access, ingress and egress, use of utility lines, pipes, ducts, and equipment, and other common areas, facilities and equipment or services, rights to use or enjoy all "Shared Elements" as described and set forth in said Residential Master Deed, rights to place equipment in the common areas and facilities of the Kimball Towers Residential Condominium as provided in the Residential Master Deed, and all other rights or easements reserved or granted to the Kimball

Towers Commercial Condominium, and/or to its unit owners, and/or to the managing board of its organization of unit owners, all as more particularly set forth or described in said Residential Master Deed, or the by-laws of the organization of unit owners thereof.

3. (a) Description of Building. The Building described above is located on the Building Parcel, and in its central portion or main part and in a part located at the intersection of Hillman Street and Davis Court (herein called the "Hillman-Davis Section") presently consists of eleven floors, to wit, the basement level, a ground floor level, first floor level with mezzanine, seven floors (referred to herein as the second through eighth floors respectively) and a penthouse floor level, and in the portion located at the intersection of Hillman Street and Chestnut Street (herein called the "Hillman-Chestnut Section") presently consists of a partial basement, the ground floor level, first floor level and mezzanine. This Condominium is located entirely in the main section of the Building, and is contained within the ground floor level and the first floor level and mezzanine.

There is being recorded concurrently herewith a master deed and condominium by-laws establishing the "Kimball Towers Residential Condominium" (the "Residential Condominium") within certain portions of the Building other than those contained within or identified as part of this Condominium, all as more particularly described in said Residential Condominium Master Deed and which include all portions of the Hillman-Chestnut Section and the Hillman-Davis Section of the Building.

(b) Building Materials; Units

The Building is made of steel and concrete construction with tar and gravel roof. The interior members of the Building are built of wood and metal with lathe and plaster or gypsum board walls. The Building is heated by an oil-fired boiler in the basement, which is operated and maintained pursuant to the "Shared Element Cost Sharing Agreement" recorded herewith between the Kimball Towers Commercial Condominium Association (the "Condominium Association"), the organization of unit owners of this Condominium, and the Kimball Towers Homeowners Association, the organization of unit owners of the Residential Condominium.

The Condominium consists of three (3) units, designated on the plans as Units C1, C3, and C6. Unit C1 consists of the entire ground floor level of the Building, excluding the Common Elements and excluding the common areas and facilities of the Residential Condominium located on the ground floor.

3.1 Easements. There is granted, included and made appurtenant to the Condominium for the benefit of the

Condominium Association, and the owners of the Units of the Condominium, and all those claiming by, through, and under them, certain perpetual rights, benefits, privilege and easements set forth or provided for in the Residential Master Deed, and subject to the terms, provisions, requirements, and regulations and obligations applicable thereto set forth in the Residential Master Deed and the by-laws of the Kimball Towers Homeowners Association recorded with the Residential Master Deed, which said easements are generally set forth in Paragraph 5 of the Residential Master Deed, but may be contained in other portions of the Residential Master Deed, or said by-laws of the Kimball Towers Homeowners Association, the terms of which said perpetual rights, benefits, privileges and easements are incorporated herein as if fully set forth herein.

4. Description and Identification of Units. The designation of each Unit, a statement of its location, the number of rooms in each Unit, the immediate common area to which the Unit has access, its approximate area and its proportionate interest in the common areas and facilities of the Condominium (the "Common Elements") are set forth on Exhibit I attached hereto and made a part hereof.

Each Unit is enclosed by the intersection of the vertical Unit boundaries and the lower and upper Unit boundaries described below:

- (a) Vertical Unit Boundaries: the vertical planes of the innermost unfinished surfaces of the exterior walls of the Building and the vertical planes of the innermost unfinished surfaces of the interior walls dividing the Unit from "Common Elements" (hereafter defined) or other Units, or common areas and facilities of the Residential Condominium, as the case may be, and in such cases in which the Unit boundaries according to the "Plans" as defined in Section 6 hereof, are demising lines or boundary lines, and not interior walls constructed as of the date hereof, the vertical unit boundary shall be said unit boundary lines as located in the Plans extended vertically to intersection with the lower and upper unit boundaries.
- (b) Lower and Upper Unit Boundaries: the lower Unit boundary is the uppermost face of the sub-flooring of the Unit and the upper Unit boundary is the horizontal plane of the Unit ceiling.

Portions of Units C1, C3 and C6 located within the "Proposed Stairway" shown on "Plans", as hereafter described, may, subject to the provisions of Paragraph 5(a)(3) of the Residential Master Deed, become part of the common areas and facilities of the Residential Condominium, upon recordation of

the plan and certificate described therein, in which event the portions of the Units within the Proposed Stairway area shall be removed from and as part of the Units, and as part of this Condominium.

Included within each Unit are the windows (including all glass panes) and doors which open from a Unit, and the portions of the window frames and sashes and door frames appurtenant to such windows and doors, respectively, but located beyond the boundaries of the Unit except for the exterior surfaces thereof, which are part of the common area and facilities of the Condominium. In the course of any maintenance or repair of the window and door frames located beyond the boundaries of a Unit, the owner of the Unit ("Unit Owner") shall have the right to affect the exterior surfaces thereof, provided, however, said exterior surfaces, upon completion of such maintenance and repair, shall be put back in the same condition as existed prior to said maintenance and repair by said Unit Owner.

4.1 Subdivision of Non-residential Units. The Sponsor reserves for itself, its successors and assigns, the right and power to subdivide from time to time any one or more of the Units into two or more units during such time as the Sponsor, its successor and assigns, owns such Unit; provided only that (1) the Sponsor or such successor or assign records an amended master deed, with amended plans showing the Unit as subdivided, all at its sole expense, in such form as is required by Chapter 183A for the Plans as originally filed and (2) that the percentage interest in common area and facilities of the Units resulting from such subdivision shall be equal in the aggregate to the original percentage interest of the Units from which they were subdivided or such percentages as may otherwise be agreed upon in writing in an amendment of this Master Deed approved in writing by the owners of all of the Units of this Condominium and their respective Unit mortgagees. Each Unit Owner, by acceptance of a Unit Deed, shall and does hereby consent to any and all such amendments to the Master Deed by the Sponsor, its successor and assigns and by such acceptance agrees to and does without further act grant the Sponsor his or her power of attorney irrevocable and coupled with an interest, to execute any and all such amended master deeds (or amendments to the Master Deed, as the case may be) in his or her name and on his or her behalf.

5. Description of the Common Elements. The common areas and facilities of this Condominium (the "Common Elements") consist of all portions of this Condominium which are not a part of the Residential Condominium or included within or as part of any Unit of this Condominium, including all conduits, chutes, ducts, plumbing, wiring, flues and other facilities for the furnishing of utility services located in the Common Elements or any of the Units and which serve this Condominium

and not the Residential Condominium and all such facilities contained within any Unit which serve parts of the Condominium (including Units) other than the Unit within which such facilities are contained, all easements, rights and privileges referred to in Paragraph 3.1 hereof, provided for the benefit of the Condominium or the organization of its unit owners in the Residential Master Deed or the by-laws of the Kimball Towers Homeowners Association, and such additional common areas and facilities as may be defined in Chapter 183A.

6. Floor Plans and Site Plan. Simultaneously with the recording hereof there has been recorded certain plans (herein the "Plans"), to-wit: a set of the floor plans of the Building, showing the layout, location, unit numbers and dimensions of the Units stating the address of the Building and bearing the verified statement required by the Condominium Law certifying that the plans fully and accurately depict the layout, location, unit numbers and dimensions and approximate areas of the Units, as built, prepared by a Massachusetts architect.

7. Use of the Units. The Building and Units may be used for any purpose permitted from time to time by applicable zoning ordinances and other applicable laws.

Use of the Units may be further restricted as herein set forth and under Sections 9 and 15 of Article VI and Sections 1 and 2 of Article VIII of the "By-Laws" of the Condominium Association and the "Rules and Regulations" thereof, and the "Rules and Regulations" adopted or promulgated by the Homeowners Association, all of which are incorporated herein by this reference.

In addition to the foregoing, the use of the Building, the Unit and the Common Elements shall be regulated in accordance with the following provisions:

- (a) The Units and Common Elements shall be used only for purposes consistent with their design;
- (b) Each Unit shall be used only for the purposes permitted hereunder and under the By-Laws and Rules and Regulations, and to such extent as will not overload or interfere with any of the Common Elements or the enjoyment thereof by the owners of other Units;
- (c) No nuisances shall be allowed on the Property nor shall any use or practice be allowed which unreasonably interferes with or is an unreasonable annoyance to the peaceful possession or proper use of the Property by other Unit Owners or occupants or

which requires (unless the Board of Managers (the "Board") of the Condominium Association consents thereto as provided in the By-Laws) any alteration of or addition to any Common Elements;

- (d) No Unit Owner or occupant shall commit or permit any violation of the policies of insurance taken out by the Board in accordance with the By-Laws, or do or permit anything to be done, or keep or permit anything to be kept, or permit any condition to exist, which might (i) result in termination of any of such policies, (ii) adversely affect the right of recovery thereunder, (iii) result in reputable insurance companies refusing to provide insurance as required or permitted by the By-Laws;
- (e) No unlawful use shall be made of the Condominium or any part thereof, and all valid laws, orders, rules and regulations of all governmental agencies having jurisdiction thereof (collectively "Legal Requirements") shall be strictly complied with. Compliance with any Legal Requirements shall be accomplished by and at the sole expense of the Unit Owner or Owners, or the Board, as the case may be, whichever shall have the obligation under the By-Laws to maintain and repair the portion of the Property affected by any such Legal Requirements. Each Unit Owner shall give prompt notice to the Board of any written notice it receives of the violation of any Legal Requirement affecting its Unit or the Property. The Unit Owner shall keep his Unit equipped with all safety devices required under the Legal Requirements from time to time because of the uses being made of the Unit;

Notwithstanding the foregoing provisions, any Unit Owner may, at its expense, defer compliance with and contest, by appropriate proceedings prosecuted diligently and in good faith the validity or applicability of any Legal Requirement affecting any portion of the Condominium which such Unit Owner is obligated to maintain and repair, and the Board shall cooperate with such Unit Owner in such proceedings, provided that:

- (i) Such Unit Owner shall pay and shall defend, save harmless, and indemnify the Condominium Association and the Board and the managing board of the Kimball Towers Homeowners Association (the "Homeowners Association"), and all other unit owner of this Condominium and the Residential Condominium against all liability loss or damage

which any of them respectively shall suffer by reason of such contest and any noncompliance with such Legal Requirement, including reasonable attorneys' fees and other expenses reasonably incurred; and

- (ii) Such Unit Owner shall keep the Board and the Homeowners Association advised as to the status of such proceedings from time to time, and upon written request from the Board and the Homeowners Association. Such Unit Owner need not comply with any Legal Requirement so long as it shall be so contesting the validity or applicability thereof, provided that non-compliance shall not create a dangerous condition or constitute a crime or an offense punishable by fine or imprisonment, and that no part of the Building shall be subject to being condemned or vacated by reason of noncompliance or otherwise by reason of such contest. The Board and the Homeowners Association may also contest any Legal Requirement without being subject to the foregoing conditions as to contest and may also defer compliance with any Legal Requirement but only subject to the foregoing conditions as to deferral of compliance. The costs and expense of any contest by the Board shall be a "Common Expense" as defined in the By-Laws. Any amounts payable to the Board by Unit Owner under the aforesaid obligation to defend, save harmless and indemnify the Board and the Homeowners Association shall be without prejudice to any other remedy available to the Board on account of non-compliance with the Legal Requirements.
- (f) If any governmental license or permit (other than a certificate of occupancy, or a license or permit applicable to the Building as a whole and required in order to render lawful the operation of the Building for the uses permitted herein) shall be required for the proper and lawful conduct of business in any particular Unit, and if failure to secure such license or permit would in any way affect any other Unit or the owner thereof or the Condominium Association, the Unit Owner of such Unit at its sole expense shall procure and maintain such license or permit and comply with all the terms and conditions thereof;
- (g) No Unit Owner or occupant shall discharge, or permit to be discharged, anything into waste or soil lines, vents or flues of the Building which might reasonably be anticipated to cause damage thereto, spread odors or otherwise be offensive;



- (h) All data processing, computer, business machines and equipment, kitchen equipment and all other plumbing and mechanical equipment installed in any Unit, and all replacements or repairs to the Unit, shall be so designed, installed, maintained and used by the Owner and occupant of such Unit, at the sole expense of such Owner, as to minimize insofar as possible and to reduce to a reasonably acceptable level the transmission of noise, vibration, odors and other objectionable transmissions from such Unit to any other area of the Building;
- (i) No Unit Owner or occupant shall keep, house or harbor any pets or animals in a Unit or any other portion of the Property unless first consented to in writing by the Board;
- (j) Each Unit Owner shall keep his Unit in a good state of cleanliness; shall not allow anything to fall from the windows or doors of the Unit, nor sweep or throw from the Unit any dirt or other substance into any of the walls, ventilators or elsewhere in the Building or the Condominium;
- (k) No blinds, shades or screens shall be attached to, hung, used or exposed on or at any exterior window or door of a Unit, without the prior written consent of the Board;
- (l) No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any Unit Owner on any part of the exterior of the Building or any Unit (including windows and exterior doors) or any other portion of the Property without the prior written consent of the Board;
- (m) The architectural integrity of the Building and exterior appearance thereof and of the Units shall be preserved without modification, and to that end, no awning, aerials, screen, antenna, sign, banner or other device and no exterior change, addition, structure, projection, decoration or other feature shall be erected or placed upon or attached to the Building or any Unit or any part of either except as permitted under the By-Laws. Unit Owners may decorate and rehabilitate the interior of their respective Units, provided that the foregoing restriction is complied with and all work is performed pursuant hereto and pursuant to the By-Laws;
- (n) All rules and regulations promulgated by the managing board of the Homeowners Association, including those recorded with its by-laws, herewith, and all

subsequent rules and regulations as applicable to the use, operation and enjoyment of the Building shall be observed and complied with by the Unit Owners of the Condominium.

- (o) No signs may be installed or affixed by any Unit Owners or their lessees, tenants, occupants, licensees, or other persons claiming by, through or under them, on the exterior facade and exterior portions of the Building pursuant to Paragraph 5(a)(7) of the Residential Master Deed without the prior written consent of the Board, in each instance, as to the size, content, location, and other particulars of the sign.

The foregoing restrictions shall be for the benefit of all Unit Owners and shall be administered on behalf of the Unit Owners by the Board and shall be enforceable by any Unit Owners or the Board, insofar as permitted by law, shall be perpetual; and to that end may be extended at such time or times and in such manner as permitted or required by law for the continued enforceability thereof. No Unit Owner shall be liable for any breach of the provisions of this paragraph except such as occur during his or her period of Unit ownership.

8. Organization of Unit Owners. The Kimball Towers Commercial Condominium Association, through which the Unit Owners will manage and regulate the Condominium has been established pursuant to the By-Laws recorded herewith. The Condominium Association is an unincorporated membership association of which all Unit Owners shall be members and in which the Unit Owners shall have a beneficial interest (and voting rights) in proportion to the percentage undivided interest in the Common Elements appurtenant to their respective Units. The names and addresses of the first Board of Managers of the Condominium Association, so designated in the By-Laws, are as follows:

Neil Zais	183 State Street Boston, Mass. 02109
Steven J. Watchmaker	183 State Street Boston, Mass. 02109

The respective terms of the members of said first Board of Managers are set forth in the By-Laws.

9. Amendment of Master Deed. This Master Deed may be amended by vote of at least 66.66% in common interest of all Unit Owners cast in person or by proxy at a meeting duly held in accordance with the provisions of the By-Laws, or in lieu of such a vote, any amendment may be approved in writing by 66.66% in common interest of all Unit Owners (all such written approvals to be made within a period of not more than six

months from the date the amendment is first approved by a Unit Owner), provided, however, that no amendment hereto shall be of any force or effect if it shall: (a) change the size of any Unit or its appurtenant percentage of undivided interest in the Common Elements or a Unit's voting rights in the Condominium Association, unless all of the record owners of such Unit and all of the mortgagees of record holding mortgages on such Unit and all lessees of record of such Unit consent thereto in writing; (b) abrogate, cancel or modify any of Sponsor's rights or reserved rights described herein or in the By-Laws, unless Sponsor consents thereto in writing; (c) affect any Unit in any manner which impairs the security of a first mortgage of record held by a bank or insurance company unless the same has been assented to by the holder of such mortgage and no amendment of Paragraph 22 hereof shall be effective without the prior written consent of one hundred percent of the "first mortgagees" as defined in said Paragraph 22 of the Units; (d) alter this Master Deed in any manner which would render it contrary to or inconsistent with any requirements or provisions of the Condominium Law; and (e) abrogate any management agreement between the Board and a managing agent.

No amendment shall be effective until said amendment or a certificate thereof signed and acknowledged by the Clerk of the Condominium Association shall have been duly recorded with the said Hampden Registry of Deeds.

10. Determination of Percentage in Common Elements. The percentages of interest of the respective Units in the Common Elements as set forth in Exhibit B hereto have been determined upon the basis of the approximate relation which the fair value of each Unit on the date hereof bears to the aggregate fair value of all the Units on this date.

11. Encroachments. If any portion of the Common Elements hereafter encroaches upon any Unit, or if any Unit hereafter encroaches upon any other Unit or upon any portion of the Common Elements or the common areas and facilities of the Residential Condominium as a result of (a) settling or shifting of the Building, or (b) alteration or repair to the Common Elements made in accordance with the Master Deed or By-Laws, or (c) repair or restoration of the Building or a Unit after damage by fire or other casualty or after a taking by reason of condemnation or eminent domain proceedings, a valid easement shall exist for such encroachment and for maintenance to the extent of and for the duration of such encroachment.

12. Pipes, Wires, Flues, Ducts, Cables, Conduits, Public Utility Lines Located Inside of Units. Each Unit Owner and the Condominium Association shall have an easement in common with the owners of all other Units and the Residential Condominium and its unit owners and the Homeowners Association (which said easements are hereby granted and made effective) for use and

repair of all pipes, wires, ducts, flues, cables, conduits and public utility lines within the Common Elements or in any of the Units of the Condominium serving his Unit and the Common Elements or his Unit in common with other Units. Each Unit shall be subject to an easement in favor of the owners of all other Units and the Condominium Association and the Residential Condominium and its unit owners and the Homeowners Association for use and repair of pipes, wires, ducts, flues, cables, conduits and public utility lines serving such Unit together with the Common Elements or such other Units and located in such other Units. The use and repair rights hereabove described shall be reasonably exercised so as to minimize interferences with the use and occupancy of the Units and Common Elements subject to said easement rights and the party exercising said rights shall repair and restore any loss or damage to any Unit (including the personal property and equipment contained in said Unit) or to the Common Elements resulting from the exercise of said rights, to the extent the loss or damage is not covered by applicable insurance policies. The Board shall have a right of access to each Unit to inspect the same, and maintain, repair or replace the Common Elements contained therein or elsewhere in the Building.

13. Acquisition of Units by Condominium Association. In the event: (a) any Unit Owner shall surrender or convey his Unit to the Board, together with: (i) the undivided interest in the Common Elements appurtenant thereto; (ii) the interest of such Unit Owner in any other Unit acquired by the Board or their designee on behalf of all Unit Owners or proceeds of a sale or lease thereof, if any; (iii) the interest of such Unit Owner in any other assets of the Condominium; (iv) membership rights of said Unit in the Condominium Association and (v) all easements as to the use and enjoyment of the Building or the Residential Condominium set forth in the Residential Master Deed (items (i) through (v), inclusive, immediately above being hereinafter collectively called the "Appurtenant Interests"); or (b) the Board shall purchase, at a foreclosure or other judicial sale, a Unit, together with the Appurtenant Interests, then title to any such Unit, together with the Appurtenant Interests, shall be acquired and held by the Board or its designee, corporate or otherwise, on behalf of all Unit Owners in proportion to their respective interests in the Common Elements. The Board may lease said Unit on behalf of the Unit Owners and all income from said rental shall be owned by the Unit Owners according to their respective interests in the Common Elements, said income to be distributed to the Unit Owners or applied in payment of the Common Expenses of the Condominium as the Board may determine. Any portion of the Common Expenses chargeable to the Unit acquired by the Board shall be included in the Common Expenses of the Condominium and shall be assessed to and paid by the other Unit Owners in proportion to their respective interests in the Common Elements.

Notwithstanding anything contained herein or in the By-Laws to the contrary, the Board shall not be empowered to purchase any Unit of the Condominium, unless so required under the Condominium Law, or other applicable laws, without first obtaining the written consent of the owners of one-hundred percent in interest of the common areas and facilities of the Condominium. The foregoing shall apply whether the Board intends to take title in its own name, or in the name of an agent or nominee.

14. Units Subject to Master Deed, By-Laws and Unit Deed. All present and future owners, tenants, visitors, servants and occupants of Units shall be subject to, and shall comply with, the provisions of this Master Deed, the By-Laws of the Condominium Association, and the Rules and Regulations (collectively called the "Documents" herein). The acceptance of a deed or conveyance or the entering into occupancy of any Unit shall constitute an agreement that: (a) the provisions of the Documents are accepted and ratified by such owner, tenant, visitor, servant or occupant, and all such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof, and (b) a violation of the provisions of the Documents by any such person shall be deemed a substantial violation of the duties of the respective Unit Owners.

15. Invalidity. The invalidity of any provisions of this Master Deed shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Master Deed and, in such event, all of the other provisions of this Master Deed shall continue in full force and effect as if such invalid provisions had never been included herein.

16. Waiver. No provision in this Master Deed shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

17. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Master Deed nor the intent of any provision hereof.

18. The Condominium Law Governs. The Units and the Common Elements, the Unit Owners and the members of the Board of the Condominium Association, shall have the benefit of and be subject to the provisions of the Condominium Law in effect on the date this Master Deed is recorded and as it may hereafter be amended and, in all respects not specified in this Master

Deed or in the By-Laws set forth therein, shall be governed by provisions of the Condominium Law in their relation to each other and to the Condominium established hereby including, without limitation, provisions thereof with respect to removal of the Condominium premises or any portion thereof from the provisions of the Condominium Law. Should any provision of this Master Deed be in conflict with the Condominium Law, the terms of the Condominium Law shall govern.

19. Limitation of Liability of Sponsor. No trustee, and no beneficiary of Kimball Towers Realty Trust, individually, shall be personally liable for the observance or performance of Sponsor's obligations hereunder, all such liability being limited to the trust estate of said trust.

20. Definitions. All terms and expressions used in this Master Deed which are defined in the Condominium Law shall have the same meanings here unless the context otherwise requires.

21. Sponsor's Additional Rights; Assignment of Sponsor's Rights. In addition to all other rights of Sponsor hereunder, Sponsor reserves unto itself, its workmen, servants, contractors and work crews, the following rights until Sponsor conveys all of the Units of the Condominium to third-party purchasers: access, ingress and egress over and upon the Common Elements, as necessary to facilitate any work of reconstruction, rehabilitation, installation of equipment, improvement to the Units owned by Sponsor and the Common Elements.

Until all of the Units for sale in the ordinary course have been sold by Sponsor, notwithstanding anything to the contrary contained herein or in the By-Laws, Sponsor may use all unsold Units for sales purposes, including use as sales models or for other purposes relating to the sale of Units. Further, Sponsor shall be entitled to (a) install signs or fixtures in the unsold Units and Common Elements incident to sales purposes and (b) allow access, ingress and egress to prospective purchasers, brokers and sales personnel and other proper parties over and upon the Common Elements, on such days and during such hours as may be determined by Sponsor in its sole discretion to allow inspection and showing of Units owned by Sponsor. The signs, fixtures and other items installed in or upon the Common Elements by Sponsor to facilitate the sale of Units shall not be considered Common Elements, shall remain the property of Sponsor, and shall be removed by Sponsor, at its sole cost and expense, not later than ten (10) days after the date of conveyance of the last Unit in the Condominium held by Sponsor for sale in the ordinary course.

Sponsor, by deed or separate assignment, shall be entitled to assign any and all of its rights and reserved rights in this Master Deed and in the By-Laws (including, without limitation,

Sponsor's rights contained in Article II and Section 15 of Article VI thereof), all of which said reserved rights of Sponsor in the By-Laws are incorporated herein by this reference, at any time (including the Condominium Association), and from time to time, to any person, trust, firm or entity as may be determined by Sponsor.

22. Certain Additional Rights of First Mortgagees.

Notwithstanding anything to the contrary elsewhere contained in the Master Deed and/or the By-Laws, the Sponsor and Unit Owners hereby agree:

(a) Any holder of a first mortgage covering any Unit (herein called a "first mortgagee") who obtains title to a Unit pursuant to the remedies provided in the mortgage or by reason of foreclosure of the mortgage covering said Unit will not be liable for such Unit's unpaid dues or "Common Charges" (as defined in the By-Laws) or other liabilities to the Condominium Association which accrue prior to the acquisition of title to such Unit by the first mortgagee.

(b) Except as provided by the Condominium Law or other applicable statute in case of condemnation or substantial loss to the Unit and/or Common Elements of the Condominium, unless one hundred (100%) percent of the first mortgagees have given their prior written approval, neither the Unit Owners nor the Board of the Condominium Association shall:

(i) by act or omission, seek to abandon or terminate the Condominium;

(ii) change the prorata interest or obligations of any Unit for the purpose of: (x) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (y) determining the prorata share of ownership of each Unit in the Common Elements;

(iii) partition or subdivide any Unit;

(iv) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements or Units by the Condominium Association shall not be deemed a transfer within the meaning of this clause);

(v) use hazard insurance proceeds for losses to any condominium property (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction of such condominium property;

(vi) perform any restoration or repair of the Condominium after a partial condemnation or damage due to an

insurable hazard, other than substantially in accordance with the Master Deed, the floor plans and site plans recorded herewith, and the original construction plans and specifications;

(vii) reallocate or reapportion interests in the Common Elements appurtenant to the Units following partial condemnation or partial destruction or otherwise;

(viii) make any decision to establish self-management after professional management of the Condominium required by any first mortgagee has been in effect;

(ix) amend or add any material provisions of the Master Deed or By-Laws which provide for, govern or regulate any of the following, without the prior written approval of first mortgagees holding mortgages covering units owning not less than one-hundred (100%) percent in common interest:

- A. Voting rights appurtenant to the Units;
- B. Assessments, assessment liens or subordination of such liens;
- C. Reserves for maintenance, repair and replacement of the Common Elements (or Units, if applicable);
- D. Insurance or Fidelity Bonds;
- E. Rights to use Common Elements;
- F. Responsibility for maintenance and repair of the several portions of the Condominium;
- G. Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium;
- H. Convertibility of Units into Common Elements or of Common Elements into Units;
- I. Decision of the Board of Managers to establish self management when professional management has been previously required by a first mortgagee;
- J. Restoration or repair of the Condominium after a partial condemnation or damage due to an insured hazard in a manner other than as specified in this Master Deed and the By-Laws;



- K. Leasing of Units;
- L. Imposition of any right of first refusal or similar restrictions on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit.

Any first mortgagee that does not deliver or give to the board a negative response within thirty (30) days of a written request by the Board for approval of any addition or amendment pursuant to this paragraph shall be deemed to have consented to the addition or amendment set forth in such request. An affidavit by the Board making reference to this section, when recorded at the Registry of Deeds in which this Master Deed is recorded, shall be conclusive as to the facts therein set forth as to all parties and may be relied upon pursuant to the provisions of the By-Laws;

(x) Amend, alter or otherwise change any rights of (or provisions which are for the express benefit of) first mortgagees or other mortgage holders set forth in this Master Deed or in the By-Laws;

(c) No provision of this Master Deed shall give a Unit Owner, or any other party, priority over any rights of the first mortgagee of the Unit pursuant to its mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements;

(d) In the event any right of first refusal in case of the sale or lease of a Unit is incorporated into this Master Deed and the By-Laws, such right of first refusal shall not impair the rights of a first mortgagee to:

(i) foreclose or take title to a Unit pursuant to the remedies provided in the mortgage; or

(ii) accept a deed in lieu of foreclosure (or assignment in lieu of foreclosure) in the event of default under the mortgage held by the first mortgagee; or

(iii) sell or lease a Unit acquired by the first mortgagee through the procedures set forth in the preceding subsections (i) and (ii) without regard to said first refusal right.

Any person or party taking title to a Unit through a foreclosure sale duly conducted by a first mortgagee shall be exempt from any right of first refusal adopted by the Unit Owners and incorporated in this Master Deed and the By-Laws;

(e) Condominium Common Charges shall include an adequate (as determined by the Board) reserve fund for maintenance, repairs and replacement of those Common Elements that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special assessments. In addition, a working capital fund or reserve fund shall be established and will contain an amount equivalent to not less than two months' Common Charges for each Unit (as adjusted annually by the Board). As to any Units owned by Sponsor and not conveyed to third-party purchasers within 60 days after the recording of the Master Deed, Sponsor shall contribute to the working capital fund an amount equivalent to two-months' Common Charges applicable to such Unit. Amounts paid into this fund shall not be nor considered to be advance payments of Common Charge assessments;

(f) A first mortgagee, upon written request to the Board identifying itself and giving its address and the identity of the Unit covered by its mortgage, will be entitled to timely written notification from the Board of: (i) any default in the performance by the Unit Owner of a Unit covered by its mortgage of any obligation under the Documents including payment of Common Charges which is not cured within sixty (60) days of the date said performance or payment is due; (ii) all meetings of the Unit Owners, (and any first mortgagee shall be entitled to designate a representative to attend such meetings); (iii) any material amendments to the Master Deed or By-Laws. In addition, any first mortgagee, promptly after written request, shall receive free of charge copies of all financial statements, whether or not audited, required to be prepared under the By-Laws;


(g) A first mortgagee, upon written request to the Board, shall be entitled to timely written notification from the Board of: (i) any condemnation loss or casualty loss which affects a material portion of the Condominium or the Unit covered by the mortgage held by such first mortgagee; (ii) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Board; and (iii) any proposed meeting of the Unit Owner in which action is proposed as to which the consent of any first mortgagee is required hereunder;

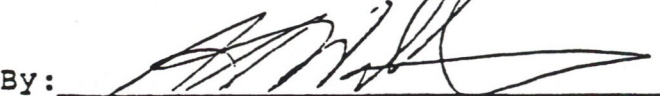
Sponsor intends that the provisions of this Section 22 shall comply with the requirements of the "Secondary Mortgage Market Entities", defined below, with respect to condominium mortgage loans and, except as otherwise required by the provisions of the Condominium Law, all disputes, questions, controversies and other matters with respect thereto shall be resolved consistent with the intention of so complying and of qualifying the mortgages of Units in the Condominium for sale, transfer or assignment to said entities.

23. Special Amendment. Notwithstanding anything herein or in the By-Laws to the contrary, Sponsor reserves the right and power to enact and record with the Registry of Deeds, in which this Master Deed is recorded, one or more special amendments ("Special Amendment") to this Master Deed and/or the By-Laws, at any time and from time to time which amends this Master Deed or the By-Laws: (i) to comply with requirements of the Federal National Mortgage Association, the Governmental National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veterans Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities (herein called the "Secondary Mortgage Market Entities"); (ii) to induce any of such Secondary Mortgage Market Entities to make, purchase, sell, insure, or guarantee first mortgages covering ownership of any Units in this Condominium; (iii) to bring this Master Deed and By-Laws into compliance with the Condominium Law; or (iv) to correct clerical or typographical errors in this Master Deed or any exhibit thereto or any supplement or amendment thereto or the By-Laws. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Sponsor to vote in favor of, make, or consent to any such Special Amendment(s) on behalf of each Unit Owner. Each deed, mortgage, other evidence of obligation, or other instrument affecting a Unit and the acceptance thereof, shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power to the Sponsor to vote in favor of, make, execute and record Special Amendments. The right of the Sponsor to act pursuant to rights reserved or granted under this Section shall automatically be deemed to have been assigned by Sponsor (without further written confirmation, act or deed) to the Board at such time as the Sponsor ceases holding title to one (1) Unit in the Condominium, unless a prior assignment of such rights has been made by Sponsor.

IN WITNESS WHEREOF, the undersigned has caused this Master Deed to be executed under seal this 31st day of October, 1985.

KIMBALL TOWERS REALTY TRUST

By:   
 \_\_\_\_\_  
 Neil Zais, as Trustee  
 but not individually

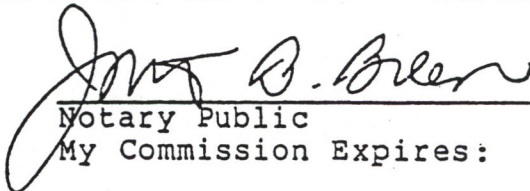
By:   
 \_\_\_\_\_  
 Steven J. Watchmaker, as Trustee  
 but not individually

COMMONWEALTH OF MASSACHUSETTS

SUTRIK, ss.

October 31, 1985

Then personally appeared the above-named Steven J. Watchmaker, as Trustee of Kimball Towers Realty Trust, and acknowledged the foregoing instrument to be his free act and deed, as Trustee, and the free act and deed of Kimball Towers Realty Trust, before me,

  
\_\_\_\_\_  
Notary Public  
My Commission Expires:

9059A  
10/25/85

JONATHAN B. BREEN, Notary Public  
My Commission Expires August 3, 1990

