

7/10/86

COPY

SECOND AMENDMENT TO
MASTER DEED OF
KIMBALL TOWERS RESIDENTIAL
CONDOMINIUM

COPY

THIS AMENDMENT dated as of this day of , 1986 amends the Master Deed of the Kimball Towers Residential Condominium dated October 31, 1985; and recorded with the Hampden County Registry of Deeds in Book 5944, Page 457, as amended by First Amendment to Master Deed of Kimball Towers Residential Condominium dated as of February 22, 1986, and recorded with Hampden County Registry of Deeds in Book 6035, Page 301.

WITNESSETH:

WHEREAS, the undersigned, being the owners of all of the units (the "Units") of the abovementioned Kimball Towers Residential Condominium owning and entitled to vote one-hundred (100%) percent in common interest of the Kimball Towers Residential Condominium, hereby waiving notice of any meeting of the Unit Owners of the Condominium as permitted under Section 2 of Article V of the By-Laws of the Kimball Towers Homeowners Association recorded with said Hampden Deeds in Book 5944, Page 498 as amended by First Amendment to By-Laws of the Kimball Towers Homeowners Association recorded in Book 6035, Page 115, and the floor plans and site plan recorded concurrently therewith (the "First Amendment"), hereby consent to and adopt the within amendment to the Master Deed, and said Master Deed is hereby amended, as follows:

I. The first two sentences of the second grammatical paragraph of sub-paragraph 3(b) of the Master Deed appearing on Page 3 of the Master Deed, to-wit:

"The Condominium consists of one hundred and thirty-one (131) units (the "Units") of which a total of ten (10) Units are located in the Hillman-Davis Section and Hillman-Chestnut Section. There are seventeen (17) Units on each of the second through eighth floor levels of the main section of the Building, and there are two (2) Units on the penthouse floor level.",

are hereby deleted in their entirety, and are replaced by the following:

"The Condominium consists of one hundred and thirty-two (132) units (the "Units"). There are a total of five (5) Units (to-wit, Units 101, 102, 103, M-1 and M-2) in the Hillman-Chestnut Section and a total of six (6) Units (to-wit, Units G-1, G-2, 104, 105, M-3 and M-4) on the ground floor, first floor and mezzanine floor portions of the Hillman-Davis Section. There are seventeen (17) Units on each of the second through eighth floor levels of the

main section of the Building and the Hillman-Davis Section. There are two (2) Units on the penthouse floor level of the Building.

Upon the recordation of the "Phasing Amendment" described in Paragraph 24 of this Master Deed with the Hampden County Registry of Deeds, the Condominium will contain one hundred and thirty-five (135) Units and the term "Units" as used in the Master Deed and the By-Laws of the Kimball Towers Homeowners Association, shall then mean and refer to the Units in the Condominium as described in the Master Deed, as amended by the First Amendment to Master Deed of Kimball Towers Residential Condominium and the floor plans recorded therewith (the "First Amendment"), the Second Amendment to Master Deed of the Kimball Towers Residential Condominium and the floor plans recorded therewith (the "Second Amendment"), and the Phasing Amendment and the floor plans recorded therewith. After the recording of the Phasing Amendment, a total of five (5) Units will be located on the penthouse floor level of the Building."

II. The designations of the rooms in Units 104 and 105 set forth in Exhibit B to the Master Deed have been changed, and there is recorded herewith a revised floor plan of the first floor level of the Kimball Towers Residential Condominium showing Unit 104 and Unit 105 and the present room designations for each such Unit. The said first floor floor plan recorded herewith shall replace in all respects and for all purposes the floor plan of the first floor level of the Kimball Towers Residential Condominium recorded with the First Amendment.

The number of rooms set forth below for said Units 104 and 105 corresponds with the revised floor plan recorded herewith and replaces and amends the respective numbers of rooms and room designations thereof set forth in Exhibit B to the Master Deed, as amended by the First Amendment, as follows;

<u>Unit</u>	<u>Number of Rooms</u>
104	FL, R
105	FB, R

III. The percentage interest ownership in the common areas and facilities of the Condominium (the "Common Elements") appurtenant to each of the Units set forth in Exhibit B to the Master Deed as originally recorded is stated in absolute terms, and not on a percentage basis, and accordingly, the percentage interest ownership of each Unit in the Common Elements is amended and restated as set forth in Exhibit I hereto.

IV. The following new grammatical paragraph is inserted as the second grammatical paragraph in Paragraph 4(a) of the Master Deed on Page 4 thereof:

"The recorded Phasing Amendment shall include an amendment to the Exhibit B originally recorded with the Master Deed, as modified and amended by the First Amendment, which will contain a description of each of the Units then located on the penthouse floor level of the Building, a statement of its location in the Building, the number of rooms in each such Unit, the immediate common area to which each said Unit has access, and the approximate area of each such Unit, which shall modify said Exhibit B in accordance with said amendment and which shall restate and replace all information relating to the location, number of rooms, immediate common area accessed, and approximate square footage (area) of Unit P-1 and Unit P-2 contained in the Exhibit B originally recorded with the Master Deed. In addition, upon the recordation of the Phasing Amendment, the percentage ownership interest in the Common Elements of the Condominium appurtenant to the Units in the Condominium shall be restated and amended so that percentage interest appurtenant to each such Unit shall be that set forth for such Unit in the schedule entitled "Revised Schedule of Unit Percentage Interests After Phase Addition" attached hereto and made a part hereof, and the percentage ownership interest for the respective Units set forth in said Revised Schedule of Unit Percentage Interests After Phase Addition shall replace in all respects and for all purposes the Unit percentage interests set forth in the Exhibit B originally recorded with the Master Deed, as amended by the Second Amendment and Schedule I thereto. All references to "Exhibit B" of the Master Deed shall mean the Exhibit B originally recorded with the Master Deed, as amended by the First Amendment, the Second Amendment, and, if recorded, the Phasing Amendment."

V. The word "windows" as used in the last grammatical paragraph of Paragraph 4(a) of the Master Deed appearing on Page 4 thereof, shall include all skylights located within a Unit and all glass therein and all skylight mechanisms, and all plate glass located in a Unit.

VI. Subclause 2(f) of Paragraph 5(a) of the Master Deed, applicable to the Common Elements roof of the "Building" (as defined in the Master Deed), shall be amended as follows:

(a) The following portions of said subclause, commencing on the first line appearing on Page 10 of the Master Deed and ending on the fourth line from the top of Page 10, to wit:

"and related equipment or fixtures and the roof skylight between the Hillman-Chestnut Section and the Hillman-Davis Section (herein called the "Roof");",

is hereby deleted in its entirety, and replaced by the following:

"and all parapet walls, roof walls, skylights, portions of the roofing of the portions of the Building between the Hillman-Chestnut Section and the Hillman-Davis Section, all roofs, skylights, and other roofing features and equipment constructed or installed by Sponsor pursuant to Paragraph 24 of the Master Deed, over, above or relating to those Units, Common Elements and improvements located on or above the penthouse floor level of the Building, and all supporting or related elements, features, and fixtures of any of the foregoing (herein collectively called the "Roof");"; and

(b) At the end of subclause 2(f) of Paragraph 5(a) of the Master Deed, the following shall be added after the words "the Kimball Towers Homeowners Association" appearing on the twentieth line from the top of Page 10 of the Master Deed:

"and provided further, that:

(A) the Sponsor reserves the right to utilize those portions of the Roof which are shown as the "Roof Renovation Area" on the plan recorded with the Second Amendment for purposes of constructing and locating and continuing thereon any or all of the improvements, construction, structures and work referred to in or permitted under Paragraph 24 of the Master Deed; and

(B) the Sponsor reserves the right in the recorded Phasing Amendment to make changes in the boundaries of Reserved Roof Area P-1, and/or Reserved Roof Area P-2, and the right to designate, locate and establish under the recorded Phasing Amendment and the floor plans recorded therewith, revised locations on the Roof of Reserved Roof Area P-1 and Reserved Roof Area P-2, and areas designated as "Reserved Roof Area P-3", "Reserved Roof Area P-4" and "Reserved Roof Area P-5", and to provide and grant an easement for the exclusive use of each such "Reserved Roof Area" (as defined herein) as appurtenant to Units P-1, P-2, P-3, P-4 and P-5, respectively, for use for recreational and other purposes consistent with applicable building and zoning codes and this Master Deed and the By-Laws of the Kimball Towers Homeowners Association recorded herewith, including the right to construct roof decks and other improvements thereon, as approved by the

Board of Managers of the Kimball Towers Homeowners Association. The term "Reserved Roof Areas" shall mean, collectively, those Reserved Roof Areas appurtenant to the Units under the Master Deed as most recently amended, and the term "Reserved Roof Area" shall mean that designated Reserved Roof Area appurtenant to any of the Units. Each of the Reserved Roof Areas shall be defined and bounded by the vertical projections of the boundary lines thereof shown on the floor plans defining said Reserved Roof Area, and by the extension of the horizontal plane of the unfinished first floor ceiling of the Unit to which the exclusive use of said Reserved Roof Area is appurtenant."

VII. The following new provision shall be inserted at the end of clause (5) of Paragraph 5(a) appearing on Page 10 of the Master Deed, after the word "Building":

"subject, however, to the rights of the Sponsor to utilize the air space above the Building for the purposes described in Paragraph 24 hereof, and to modify, create or establish (as the case may be) within said air space under the Phasing Amendment, Units P-1, P-2, P-3, P-4 and P-5 of the Condominium, or portions thereof, and subject, also, to the rights appurtenant to Units P-1, P-2, P-3, P-4 and P-5, for the use, occupancy, and enjoyment of the Reserved Roof Areas respectively appurtenant thereto;"

VIII. Paragraph 6 of the Master Deed, as amended by Paragraph 16.C. of the First Amendment to Master Deed of the Kimball Towers Residential Condominium shall be further amended by inserting the following new paragraph at the end thereof:

"Concurrently with the recording of the Phasing Amendment described in Paragraph 24 of the Master Deed, there shall be recorded a set of floor plans (herein called the "Phasing Floor Plans") of the penthouse and roof level of the Building, showing the layout, location, unit numbers and dimensions of the Units located thereon (namely Units P-1, P-2, P-3, P-4 and P-5), stating the address of the Building and bearing the verified statement required by the Condominium Law certifying that said floor plans fully and accurately depict the layout, location, unit numbers, dimensions and approximate areas of said Units, as built, prepared by a Massachusetts registered architect. The Phasing Floor Plans shall also locate all of the Reserved Roof Areas. Said floor plan shall replace in all respects, and shall be in substitution of and for the floor plans of penthouse and roof level of the Building originally recorded with the Master Deed, as amended and

replaced by the floor plans recorded with the First Amendment to Master Deed of the Kimball Towers Residential Condominium, and upon the recording of the Phasing Amendment, wherever the term "Plans" is used in the Master Deed of the Kimball Towers Residential Condominium or the By-Laws of the Kimball Towers Homeowners Association, said term shall mean the floor plans and site plan of the land of the Condominium recorded with the said First Amendment to Master Deed of the Kimball Towers Residential Condominium, excepting the floor plans of the penthouse and roof level of the Building recorded therewith, and shall include (a) the floor plans of the penthouse and roof level of the Building recorded with the Phasing Amendment and (b) the floor plan of the first floor level of the Condominium recorded with the Second Amendment. Prior to the recording of the Phasing Amendment, the term "Plans" shall mean said term as defined in the First Amendment, and shall include the floor plan of the first floor level of the Condominium recorded with the Second Amendment."

IX. Paragraph 7 of the Master Deed appearing on Page 13 thereof, as amended by Paragraph 9 of the First Amendment to Master Deed of the Kimball Towers Residential Condominium, to-wit:

"7. Use of the Units; Restrictions on Use. Subject to the restrictions and provisions hereof, the Units in the main section of the Building (i.e. the portions of the Building not within the Hillman-Davis Sections or the Hillman-Chestnut Section) shall be used solely for residential purposes and as professional offices as a use accessory thereto to the extent permitted from time to time by the Zoning By-Laws of Springfield. The eleven (11) units located in the Hillman-Chestnut Section and Hillman-Davis Section may be used for any residential, office or commercial purpose and any uses accessory thereto permitted from time to time by said Zoning By-law.",

is deleted in its entirety, and shall be replaced by the following:

"7. Use of the Units; Restrictions on Use. Subject to the restrictions and provisions contained in the Master Deed and By-Laws: (a) the Units in the main section of the Building (i.e. the portions of the Building not within the Hillman-Chestnut Section and below the second floor level in the Hillman-Davis Section) shall be used solely for residential purposes and as professional offices and for uses accessory thereto to the extent permitted from time to time by the Zoning By-laws of Springfield; and (b) the five (5) units located in the Hillman-Chestnut Section (to-wit: Units 101, 102, 103, M-1 and M-2) and Units 104, 105, M-3

Paragraph 1 of the First Amendment, is hereby further amended by inserting the following provisions after the first grammatical paragraph thereof appearing on Page 17 of the Master Deed:

"Notwithstanding anything set forth in this Master Deed or in the By-Laws, the Sponsor reserves and shall have the right privilege and power, at any time, without the requirement of consent from the owners of any Unit in the Condominium or the holders of any mortgages, liens or encumbrances covering any of said Units, and without any requirement for approval thereof by meeting, vote or other authority of the Unit Owners, or the holders of any mortgages, liens or encumbrances thereon, to record the Phasing Amendment described in Paragraph 24 of the Master Deed."

XI. The following new sentence is added at the end of Paragraph 10 appearing on Page 18 of the Master Deed:

"The percentages of interest of the respective Units in the Common Elements which shall be in effect after the recording of the Phasing Amendment set forth in the Revised Schedule of Unit Percentages After Phase Addition attached to the Second Amendment, have been determined upon the basis of the approximate relation which the fair value of each Unit bears to the aggregate fair value of all of the Units of the Condominium."

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and M-4 located in the Hillman-Davis Section may be used for any residential, office or commercial purpose and any and all uses accessory thereto permitted from time to time by said Zoning By-law; and (c) Units G-1 and G-2, which are located in the Hillman-Davis Section, may not be used for residential purposes or residential occupancy, but may be used for any office, retail or commercial purposes and any and all uses accessory thereto, permitted from time to time by said Zoning By-law.

Those Units located on the roof of the Building which are covered by the Phasing Amendment, namely Units P-1 and Unit P-2, and new Units P-3, P-4 and P-5, shall be used solely for residential purposes and as professional offices and for uses accessory thereto to the extent permitted from time to time by said Zoning By-law. Upon the recordation of the said Phasing Amendment, Units 104 and 105 shall not thereafter be used for residential purposes or residential occupancy, but may be used for any office, retail or commercial purposes and any and all uses accessory thereto permitted from time to time by said Zoning By-law."

XII. The following is added to the Master Deed as a new Paragraph 24 thereof to follow immediately after Paragraph 23 thereof:

"24. Phasing Amendment. There is recorded with the Second Amendment a plan of the penthouse and roof level of the Building prepared by R. Wendell Phillips and Associates, Inc., a registered Massachusetts architect, which locates Units P-1 and P-2 of the Condominium, and Reserved Roof Area P-1 and Reserved Roof Area P-2, as existing on the date of the recordation of the Second Amendment, and on which a large portion of the Building Roof, which is part of the Common Elements, is designated as the "Roof Renovation Area", which definition includes all portions of the roof, parapet and roof walls, skylights, and other features and elements of the roof within the boundaries of said Roof Renovation Area. Sponsor hereby reserves and shall have the right to record an amendment (herein called the "Phasing Amendment") with the Hampden County Registry of Deeds, together with the Phasing Floor Plans containing the certified statement of a Massachusetts registered architect as required in Paragraph 6 of the Master Deed, which may do any or all of the following: (a) change the size, dimensions, number of rooms, and location of Units P-1 and P-2 and to incorporate as part of said Units portions of the roof of the Building and the air space above the Building originally part of the common areas and facilities of the Condominium; and (b) add three more Units (to be designated, respectively, as Units P-3, P-4 and P-5) as Units of the Condominium on or above the penthouse floor level of the Building, and to incorporate as part of said Units portions of the roof of the Building and the air space above the Building originally part of the common areas and facilities of the Condominium; and (c) change the locations and dimensions of Reserved Roof Area P-1 and Reserved Roof Area P-2, and to establish Reserved Roof Area P-3, Reserved Roof Area P-4 and Reserved Roof Area P-5, and to reserve and grant easements as appurtenant to those Units located on the penthouse floor level of the Building for their exclusive use of said Reserved Roof Areas as described or provided for in the Master Deed; (d) establish hallways, walls, roofing and ceilings, corridors, entries, walkways, laundry rooms and other rooms, and other improvements on and above the penthouse floor level of the Building, including enclosed space and open areas, as part of the Common Elements, to be located as shown on the Phasing Floor Plans; (e) create new portions of the "Roof" of the Building above the Units and Common Elements constructed on, upon and above the penthouse floor level of the Building; and (f) effectuate the changes in the appurtenant percentage of undivided interest in the Common Elements and the voting rights appurtenant to each Unit to the percentages set forth in Revised Schedule of Unit Percentages After Phase Addition recorded with the Second Amendment.

The Phasing Amendment shall contain a statement of Sponsor that all of the Units, Common Elements, and other improvements made pursuant to the Phasing Amendment and shown on the Phasing Floor Plans, are substantially constructed and completed (excepting for so-called "punch-list" items and minor work and repair items) as of the date the Phasing Amendment is recorded.

Sponsor hereby reserves the further rights and privileges for the purposes of the construction, erection, building, creation, and completion of all of the Units, Common Elements, Reserved Roof Areas, and related fixtures and features which may be established, made or created under the Phasing Amendment (herein collectively called the "Phasing Rights"), including, without limitation, the right to utilize, modify, change, renovate, and otherwise affect all or any part of the Roof Renovation Area, and the air space above it, and the Roof, those rights of the Sponsor provided under Paragraph 20 of the Master Deed, the right to connect the Units and Common Elements covered under the Phasing Amendment, or any parts thereof, to pipes, ducts, flues, wires, and other lines and equipment in the Building for the provision of utility services thereto and the right to affect or change non-structural elements of the Building for such purposes, and in general the right to perform all work and Building activities in order to construct and erect said Units and Common Elements, and to equip, fixture, and supply the same with all fixtures, equipment, machinery, and apparatuses incident to any uses thereof permitted under the Master Deed (including the right to construct roof decks within the Reserved Roof Areas), all of the foregoing of which shall be erected and constructed in good and workmanlike manner and consistent in the quality of construction and exterior appearance with that obtaining with respect to Units P-1 and P-2, or the main section of the Building, as of the date of the recording of the Second Amendment to Master Deed of Kimball Towers Residential Condominium.

In furtherance and in confirmation of the Sponsor's right to record the Phasing Amendment, a power coupled with an interest, which is irrevocable, is hereby reserved and granted to the Sponsor, at any time, to vote in favor of, make, consent to, execute and record the Phasing Amendment on behalf of and for each Unit Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a Unit and the acceptance thereof by a Unit Owner or mortgagee, 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, consent to, execute and record said Phasing Amendment.

The rights of the Sponsor to record the Phasing Amendment and to exercise and enjoy the Phasing Rights shall terminate and be of no further force and effect whatsoever if the Phasing Amendment has not been recorded in the Hampden County Registry of Deeds on or before December 31, 1990.

XIII. Paragraph 21 of the Master Deed shall be amended by adding the following new sentence at the end thereof:

"Unless the context requires otherwise, the term "Master Deed" as used herein and in the "By-Laws" shall mean the Master Deed as originally recorded in Hampden Deeds in Book 5944, Page 457 and all floor plans and site plans recorded therewith, as the same are amended from time to time, and the term "By-Laws", as used herein and in the By-Laws of the Kimball Towers Homeowners Association, shall mean the By-Laws as originally recorded in Hampden Deeds in Book 5944, Page 498, as the same may be amended from time to time."

XIV. Subparagraph (b) of Paragraph 22 appearing on Page 22 of the Master Deed, shall be amended by inserting immediately after the word "Condominium" and before the word "unless" on the third line of said subparagraph, the following:

"and except with respect to the construction of Units, Common Elements and improvements covered by the Phasing Amendment and the Phasing Floor Plans, and except for the provisions, amendments and terms and conditions contained in said Phasing Amendment".

EXECUTED under seal on the day and year first abovewritten.

KIMBALL TOWERS REALTY TRUST,
under Declaration of Trust dated
July 2, 1984, recorded in Hampden
Deeds in Book 5645, Page 308 being
the owners of all of the Units of
the Condominium

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

By: _____
Neil Zais, as Trustee but not
individually

JOINED-IN AND CONSENTED TO BY:
KIMBALL TOWERS HOMEOWNERS ASSOCIATION

By: _____
Steven J. Watchmaker, Manager

By: _____
Neil Zais, Manager

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By: Neil Zais, Manager

KIMBALL TOWERS REALTY TRUST

By: Neil Zais, as Trustee but not individually

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

, 1986

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:

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

, 1986

Then personally appeared the above-named Steven J. Watchmaker, a member of the First Board of Managers of the Kimball Towers Homeowners Association, and acknowledged the foregoing instrument to be his free act and deed, as Manager, and the free act and deed of Kimball Towers Homeowners Association, before me,

Notary Public
My Commission Expires:

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