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SHARED ELEMENT COST-SHARING AGREEMENT

THIS AGREEMENT made this 31st day of October, 1985 by and between the Board of Managers of the Kimball Towers Homeowners Association (hereinafter called the "Homeowners Association") and the Board of Managers of the Kimball Towers Commercial Condominium Association (herein called the "Commerical Condominium Association").

W I T N E S S E T H:

WHEREAS, the Homeowners Association is the organization of unit owners of the Kimball Towers Residential Condominium established by Master Deed and condominium By-Laws recorded concurrently herewith (herein called the "Residential Condominium"); and

WHEREAS, the Commercial Condominium Association is the organization of unit owners of the Kimball Towers Commercial Condominium established by Master Deed and condominium By-Laws recorded concurrently herewith (herein called the "Commercial Condominium"); and

WHEREAS, the Residential Condominium and the Commercial Condominium (collectively herein called the "Kimball Condominiums") are both located and contained, at least in part, within the building (herein called the "Building") addressed and generally known as 140 Bridge Street and 415 Chestnut Street in Springfield, Hampden County, Massachusetts and the Kimball Condominiums share the use, enjoyment, and availability of certain structural elements of the Building, utilities and utility services, common installations of equipment, machinery and services, commonly used sidewalks, access ways, Building halls and corridors, the Building facade and exterior and other Building features generally identified as the "Shared Elements" in the Master Deed establishing the Residential Condominium; and

WHEREAS, the Master Deed establishing the Residential Condominium declares that the Shared Elements shall be operated, managed, maintained, repaired and replaced by the Homeowners Association and imposes certain covenants, responsibilities and obligations upon the the Homeowners Association for said purposes; and

WHEREAS, it is intended in the master deeds and the condominium by-laws recorded for each of the Residential Condominium and the Commercial Condominium, that the Kimball Condominiums shall share the costs and expenses (herein called the "Shared Element Expenses") arising in connection with the performance of the obligations imposed upon the Homeowners Association arising or incurred in respect to the Shared Elements; and

WHEREAS, said master deeds and by-laws impose upon each of the Homeowners Association and the Commercial Condominium Association an obligation to pay its share of the Shared Element Expenses; and

WHEREAS, the Homeowners Association and the Commercial Condominium Association (herein collectively called the "Kimball Condominiums") have developed and agreed upon a fair and equitable procedure and formula for the sharing of the Shared Element Expenses between the Residential Condominium and the Commercial Condominium, as set forth herein.

NOW, THEREFORE, in consideration of these presents and the sum of Ten (\$10.00) Dollars paid by each of the parties hereto unto the other, and for other good and valuable considerations, the receipt whereof the parties respectively hereby acknowledge, the parties covenant and agree as follows:

1. The Homeowners Association shall maintain, repair, replace, refurbish, upkeep, supply and otherwise tend and care for all of the Shared Elements in the manner and to the extent provided in the Master Deed establishing the Kimball Towers Residential Condominium, and the Homeowners Association hereby covenants and agrees (which covenant and agreement shall be irrevocable) so to do. The Homeowners Association shall pay for all reasonably necessary or desirable charges, invoices, bills and other expenses (herein called the "Shared Element Expenses") in connection with its performance of said obligations, including, without limitation, the cost of materials, equipment, parts, supplies, labor, contract services, utilities and all expenses declared to be Shared Element Expenses in the Master Deed of Kimball Towers Residential Condominium.

2. The Homeowners Association further covenants and agrees to pay for all of the following items of cost and expenses (herein called the "Additional Expenses"), except to the extent otherwise agreed upon in writing by the Board of Managers of the Homeowners Association and the Board of Managers of the Commercial Condominium Association, which covenant and agreement of the Homeowners Association shall be irrevocable:

A. Real Estate Taxes: Any and all real estate taxes levied or assessed at any and all times upon the land described in Exhibit A of the Kimball Towers Residential Condominium and the Building prior to the time the condominium units in the Residential Condominium and the Commercial Condominium are separately assessed for real estate tax purposes by the City of Chelsea, including all taxes, charges, assessments and impositions and liens for public improvements, and also including special charges and assessments prior to said time of separate unit assessments.

B. Utility Charges: Inasmuch as the Building and the Residential Condominium and the Commercial Condominium

therein share a common unitary heating and hot water supply system, and a common system for the supply of water and sewer use and certain other utility services, the Homeowners Association shall pay all charges incurred for the supply of heating oil or fuel oil for such heating and hot water services, and all charges incurred for such other utilities services provided to the Shared Elements or for the supply of utilities or services consumed in or by the Shared Elements, whether provided or supplied by a private or public firm. In addition, the Homeowners shall pay all water use, fire pipe or sewer use charges made to the Building (whether such water, fire pipe or sewer use charges are payable for such utilities consumed in or by the units of either of the said Kimball Condominiums, or their respective common areas, and facilities, or both). All of said utility, fuel, heat, water, sewer and other utility charges as described herein shall be an element of the Additional Expenses to the extent the same are not included in the budget of the "Common Expenses" of the Homeowners Association.

C. Insurance: The cost of all casualty and liability insurances carried with respect to the Building, including such all risk insurances coverages as may be required under the master deeds or by-laws of the Residential Condominium or the Commercial Condominium, which the Homeowners Association agrees to obtain, maintain and keep in force, in such limits and with such coverages and requirements as are reasonably required under the master deeds or by-laws of the Kimball Condominiums, to the extent the same are not included in the Homeowners Association budget of its "Common Expenses".

3. The Board of Managers of the Homeowners Association shall from time to time, but not less often than annually, prepare a calendar year budget of the amounts of its "Common Expenses" (as defined in its By-laws), which shall include the Shared Element Expenses and a budget of the Additional Expenses described herein, (which said Common Expenses and Additional Expenses are herein together called the "Kimball Combined Expenses"), and shall advise the Board of Managers of the Commercial Condominium Association thereof in writing.

The Kimball Combined Expenses shall in no event include: (a) the cost of purchase or financing of the purchase of any units acquired by the Homeowners Association or the Commercial Condominium Association in either of the Kimball Condominiums; and (b) the costs of "improvement", as that term is defined or used in Section 18 of Chapter 183A, of the "Hillman-Davis" and "Hillman-Chestnut" (as those terms are defined in the Residential Condominium Master Deed as originally recorded) or the main section of the "Building" (as defined in said Master Deed) on or above the second floor thereof (i.e. the floor level above the mazzanine level).

The total of the Kimball Combined Expenses set forth in said budget shall be assessed and charged as follows:

(a) Ninety (90%) percent thereof shall be assessed and charged to and paid by the Homeowners Association, which shall assess said charges to and collect said charges from unit owners of the Residential Condominium as part of the "Common Charges" payable by said unit owners under the By-Laws established for the Residential Condominium, and

(b) Ten (10%) percent thereof shall be assessed and charged to and paid by the Commercial Condominium Association, which shall assess said charges to and collect said charges from the unit owners of the Commercial Condominium as part of the "Common Charges" payable by said unit owners under the By-Laws established for the Commercial Condominium.

The Commercial Condominium Association hereby affirmatively covenants and obligates itself to pay to the Homeowners Association the ten (10%) percent share of the Kimball Combined Expenses required to be paid by it hereunder, and to assess to the unit owners of the Commercial Condominium as a part of the condominium common expenses of the Commercial Condominium, the portion of the Kimball Combined Expenses charged to it as aforesaid, and to enforce the collection of the same pursuant to the Master Deed and By-Laws of the Commercial Condominium.

The Homeowners Association hereby affirmatively covenants and agrees to assess to the unit owners of the Residential Condominium, the portion of the Kimball Combined Expenses payable by it as herein provided, and to enforce the collection of the same pursuant to the Master Deed and By-Laws of the Homeowners Association.

Should the Homeowners Association fail or refuse to perform, pay, or observe any of its responsibilities or obligations specified in the Master Deed of the Residential Condominium with respect to the Shared Elements, or any other services or obligations with respect to which the Commercial Condominium, or its unit owners, or the Commercial Condominium Association may have easements, rights or benefits, or in the event the Homeowners Association shall fail or refuse to pay any of the Additional Expenses, the managing board of the Commercial Condominium Association, in addition to all other rights and remedies which it may exercise on account thereof, shall be entitled, after seven (7) business days' written notice to the Board of Managers of the Homeowners Association, to perform any and all such obligations on behalf of and in lieu of the Homeowners Association; and said Commercial Condominium Association managing board shall be entitled to pay all charges arising therefrom or incident thereto; which said charges shall all be deemed to be Kimball Combined Expenses, to be assessed and paid as provided herein (i.e. ninety (90%) percent thereof shall be assessed and charged to and paid by the Homeowners Association and ten (10%) percent thereof shall be assessed and charged to the Commercial Condominium Association).

The Homeowners Association and the Commercial Condominium Association shall be obligated to pay the portion of the Kimball Combined Expenses assessed and charged to them, respectively, on the first day of each calendar month in installments equal to one-twelfth (1/12) of the annual assessments thereof, provided however that the Homeowners Association (and the Commercial Condominium Association during such periods as it is paying all or any portion of the Kimball Combined Expenses in lieu of the Homeowners Association as provided herein) may, by written notice, change the dates on which such payments are due (provided that they shall be no less often than quarterly); however, any such change shall apply to both of the parties hereto equally. If the portion of the Kimball Combined Expenses payable by the Homeowners Association or Commercial Condominium Association, as the case may be, shall not be paid within five (5) days of the date due, said payment shall be in default and, in addition to any other remedies available in the event of such default, shall bear interest at the rate of twelve (12%) percent per annum until paid.

3. Amendments: This Agreement may be modified or amended at any time, and from time to time, by: (a) the written approval of the Homeowners Association and the Commercial Condominium Association; and (b) the written approval of the unit owners owning sixty-five (65%) percent or more in common interest of each of the Kimball Condominiums or the vote of sixty-five (65%) percent or more in common interest of each of the Kimball Condominiums at respective meetings of unit owners of each of said Kimball Condominiums duly held for such purpose; and (c) the written approval of the holders of first mortgages covering seventy-five (75%) percent or more of the total number of condominium units in the Kimball Condominiums. No such amendment shall be effective unless and until a certificate thereof is executed by all of the members of the Board of Managers of the Residential Condominium and all of the members of the managing board of the Commercial Condominium Association are recorded with the Hampden Registry of Deeds.

4. Miscellaneous:

A. Records and Audits. The Board of Managers of the Residential Condominium and the managing board of the Commercial Condominium Association during such periods as it is paying all or any portion of the Kimball Combined Expenses in lieu of the Homeowners Association as provided herein, shall keep detailed records of its actions and minutes of its meetings relating to the Shared Elements, the Additional Expenses and the Kimball Combined Expenses; and it shall keep and maintain, or cause to be kept and maintained, the financial records and books of account applicable to the Shared Elements, Additional Expenses and Kimball Combined Expenses including a chronological listing of receipts and expenditures, as well as a separate account for each of the Homeowners Association and the Commercial Condominium Association, which among other

things, shall contain the amount of assessments of the Kimball Combined Expenses charged to each, the date when due, the amounts paid thereon, and the balance remaining unpaid. An annual report of the receipts and expenditures of the Homeowners Association (and the Commercial Condominium Association during such periods as it is paying all or any portion of the Kimball Combined Expenses) applicable to the Kimball Combined Expenses, prepared by an independent certified public accountant, shall be rendered or caused to be rendered to each of the Board of Managers of the Homeowners Association and the managing board of the Commercial Condominium Association, and to any unit owners of the Kimball Condominiums who may request the same in writing, promptly after the end of each calendar year.

B. Enforcement: The terms, provisions, covenants and restriction herein contained may be enforced by the Homeowners Association or the Commercial Condominium Association, in any judicial proceeding seeking any remedy recognizable at law or in equity, including damages, injunction, or any other form or relief against any person, firm, or entity violating or attempting to violate any covenant or restriction hereunder. The failure by any party described above to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of such covenant or restriction or of the right of such party thereafter to enforce such covenant and restriction.

C. Invalidity. The invalidity of any part of this Agreement shall not impair or affect in any manner the validity, enforceability or effect of the balance of this Agreement, which remaining provisions shall continue in full force and effect.

D. 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 Agreement, or the intent of any provisions thereof.

E. Gender. The use of the masculine gender in this Agreement shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural, whenever the context so requires.

F. Examination of Books. The books and records of account of the Homeowners Association with respect to the Kimball Combined Expenses and of the Commercial Condominium Association during such periods as it is paying all or any portion of the Kimball Combined Expenses shall be available at reasonable times on business days for examination by the unit owners of the Kimball Condominiums and by the members of the organization of unit owners of the Kimball Condominiums provided that not less than 48 hours advance written notice is given to the Homeowners Association or the Commercial Condominium Association, as the case may be.

EXECUTED under seal this 31st day of October, 1985, by the undersigned members of the Board of Managers of each of the Homeowners Association and Commercial Condominium Association.

KIMBALL TOWERS HOMEOWNERS ASSOCIATION

By: [Signature]  
Steven J. Watchmaker, Manager

By: [Signature]  
Neil Zais, Manager

KIMBALL TOWERS COMMERCIAL CONDOMINIUM ASSOCIATION

By: [Signature]  
Steven J. Watchmaker, Manager

By: [Signature]  
Neil Zais, Manager

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. October 31, 1985

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

[Signature]  
Notary Public  
My commission expires:

JONATHAN D. GREEN, Notary Public  
My Commission Expires August 3, 1990

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. October 31, 1985

Then personally appeared the above-named, Neil Zais the Manager of the Kimball Towers Commercial Condominium Association, and acknowledged the foregoing instrument to be his free act and deed before me.

[Signature]  
Notary Public  
My commission expires:

JONATHAN D. GREEN, Notary Public  
My Commission Expires August 3, 1990

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