

This document prepared by  
and return document to:

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**DECLARATION OF EASEMENTS, RESTRICTIONS,  
AND COVENANTS FOR CHINA PLACE AND WELLS STREET TOWNHOMES**

**THIS DECLARATION** made by **LAKESIDE BANK** as Trustee under trust agreement dated January 20, 1998 known as 10-1912 (hereinafter referred to as "Declarant")

**WHEREAS**, the Declarant is the titleholder in fee simple of certain Property located in the City of Chicago, County of Cook, and State of Illinois legally described as follows;

**LOTS 45 THROUGH 55 INCLUSIVE IN SANTE FE GARDEN UNIT 2 BEING A RESUBDIVISION OF PART OF BLOCKS 25, 40 AND 41 AND THE VACTED STREETS AND ALLEYS LYING WITHIN AND ADJOINING SAID BLOCKS, IN CANAL TRUSTEES' NEW SUBDIVISION OF BLOCKS IN THE EAST FRACTION OF THE SOUTHEAST FRACTIONAL 1/4 OF SECTION 21, TOGETHER WITH THAT PART OF LOT 65 IN CHINA TOWN SQUARE SUBDIVISION, ALL IN TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDAN, IN COOK COUNTY, ILLINOIS.**

PIN# 17-21-432-002

Commonly known as 2102 A-G South China Place and 2006 -2010 South Wells Street  
Chicago, Illinois 60616

**BOX 333-CTI**

CTE 7612282 DB 15g

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Property of Cook County Clerk's Office

**WHEREAS**, the Declarant desires to provide for the preservation of the value and the harmonious, beneficial, and proper use of the Property and to this end the Declarant desires to subject the Property to the rights, easements, covenants, restrictions, charges, and liens hereinafter set forth;

**WHEREAS**, it is intended that the Property be developed by the construction of two townhouse structures comprised of one seven unit townhouse structure and one three unit townhouse structure, each townhouse being a single family home ("townhouses"), which will be conveyed in fee simple to ultimate users and purchasers of the same, and with a private drive, the title to which will be conveyed to a homeowners' association which will be a not-for-profit corporation of the State of Illinois, and the organization will be responsible for maintenance of the roads, the street lighting, walkways, curbs, parking spaces and any improvement within the private drive, and any privately owned utilities that service more than one townhouse on the Property which includes the sewer and water pipes leading from the municipal connection to each townhouse;

**WHEREAS**, the Declarant intends that the several owners of the Property, their successors and assigns, and their mortgagees, guests, and invitees shall at all times enjoy the benefit of, and that the several owners of and all persons hereafter acquiring an interest in the Property hold their interests subject to, the terms of this Declaration, all of which are established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of such Property.

**NOW THEREFORE**, the Declarant hereby declares that the Property shall be held, conveyed, occupied, and encumbered subject to the rights, easements, covenants, restrictions, charges, and liens hereinafter set forth, each and all of which shall, with respect to the Property, attach to and constitute covenants running with the land.

## ARTICLE ONE

### DEFINITIONS

The following words when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

**1.01 Architectural Control Committee.** A committee of not fewer than three nor more than five Owners formed for the purposes hereinafter set forth in Article 5.17.

**1.02 Association.** CHINA PLACE AND WELLS STREET TOWNHOMES ASSOCIATION, INC., an Illinois Corporation, or a name similar thereto, and its successors and assigns.

**1.03 Board.** The Board of Directors of the Association, as constituted at any time or from time to time, in accordance with the applicable provisions hereof.

**1.04 By-Laws.** The By-Laws of the Association, as they may be amended from time to time which are contained in Article Five hereof.

**1.05 Private Drive and Common Area.** That portion of the Property intended to be devoted to the common use and enjoyment of the Owners and the other parties described herein, which shall contain walkways, driveways, parking spaces, roads, easements for ingress and egress, utility easements, and trees and other landscaping, which is Lot 48 hereinbefore described.

**1.06 Deed.** Each deed conveying a Townhouse to an Owner.

**1.07 Developer.** Parkshore Commons Limited Partnership, its successors and/or assigns.

**1.08 Improvements.** The Townhouses constructed on the Property.

**1.11 Occupant.** Any person legally entitled to occupy and use any part of portion of a Townhouse.

**1.12. Owner or Property Owner.** The record owner other than the Declarant, whether one or more persons or entities, of a fee simple title in any Townhouse.

**1.13 Person.** A natural person, firm, corporation, partnership, trustee or any legal entity, public or private.

**1.14 Property.** The real property commonly known as 2102 A-G South China Place and 2006-2010 South Wells Street, Chicago, Illinois with the private drive as hereinbefore legally described.

**1.15 Townhouse or Townhome.** A residential attached single family unit located on the Property designed and intended for independent residential use and such other uses permitted hereunder. Each Townhouse shall consist of a residential housing unit designed or intended for use as living quarters for a single family as constructed by Developer and the land on which such unit is located.

## ARTICLE TWO

### SCOPE OF DECLARATION AND CERTAIN PROPERTY RIGHTS

**2.01 Property Subject to Declaration.** Declarant, as the owner of fee simple title to the Property, expressly intends to and, by recording this Declaration, does hereby subject and submit the Property to the provisions of this Declaration.

**2.02 Conveyances Subject to Declaration.** All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant, running with the land and shall at all times inure to the benefit of and be binding on any Person having at any time any interest or estate in a Townhouse, and their respective heirs, successors, personal representatives or assigns. Reference in any deed of conveyance, lease, mortgage, trust deed, other evidence of obligation, or other instruments to the provisions of this Declaration shall be sufficient to create and reserve all of the easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved, or declare by this Declaration, as fully and completely as though they were set forth in their entirety in any such documents.

**2.03 Declarant's Reserved Rights.** Notwithstanding any provision herein to the contrary, until such time as Declarant is no longer vested with or controls title to a Townhouse in the subject property. (a) the Declarant, Developer and its agents shall have the right to place and maintain on the Property model townhomes, sales offices, advertising signs, parking spaces, and lighting in connection therewith, at such locations and in such forms as the Declarant and Developer may determine, in its discretion, to be used by its in connection with the promotion, sale, or lease of the Townhomes or of Improvements constructed or to be constructed on any part of the Property, and (b) the Declarant, Developer, its agents and contractors shall have the right to enter upon the Property for the purpose of completing construction of Improvements thereto and in connection therewith may store construction equipment and materials in appropriate areas in Townhomes owned by Declarant or Developer without payment of any fee or charge whatsoever.

**2.04 Separate Mortgages.** Each Owner shall have the right, subject to the provisions herein, to make a separate mortgage or encumbrance or other lien on his respective Townhouse. No Owner shall have the right or authority to make or create, or to cause to be made or created, any mortgage or encumbrance or other lien on or affecting any other part of the Property.

**2.05 Separate Real Estate Taxes.** Real Estate taxes, special assessments and any other special taxes or charges of the State of Illinois or any duly authorized subdivision or agency thereof, are to be separately taxes to each Owner for his Townhouse.

## **ARTICLE THREE**

### **EASEMENTS**

**3.01 EASEMENT FOR ENCROACHMENTS.** In the event that, by reason of construction, settlement or shifting any Townhome which is not owned by the Owner of said Townhome so encroaching, or said encroaching, or said encroachment occurs upon any portion

of the Private Drive, or if by reason of the design or construction thereof, any pipes, conduits, ducts or other utility facilities serving more than one Townhome encroach or shall hereinafter encroach upon any part of any Townhome or, if by reason of the design or the construction of any Townhome it shall be necessary or advantageous for any Owner to occupy or use any portion of the Private Drive for any reasonable use appurtenant to said Townhome, including without limitation, the stairways adjacent to each Townhome in the Development, valid easements for the maintenance of such encroachment and for such use of the Private Drive are hereby established and shall exist for the benefit of the Owner of the Townhome so encroaching, provided, however, that in no event shall a valid easement for any encroachment or use of the Private Drive be created in favor of any Owner if such encroachment or use is detrimental to or materially interferes with the reasonable use and enjoyment of the Townhome or Private Drive burdened thereby or, with the exception of stairways, such encroachment results from the willful conduct of the Owner of the Townhome so encroaching.

**3.02 Utility Easements.** The City of Chicago, Ameritech Telephone Company, Peoples Gas, Light and Coke Company, Commonwealth Edison Company, and all other public utilities serving the Property (including any utility company providing cable, microwave or other satellite television service) and their respective successors and assigns are hereby granted the right to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, sanitary and storm sewers and services, drainage ways and sewage, ducts, wires, street lights and other equipment into and through the Private Drive or other areas of the Property designated on the grant of easement made pursuant to this Declaration for the purpose of providing the Townhomes with such utilities.

**3.03 City of Chicago Easement.** A perpetual non-exclusive easement for ingress and egress over the Private Drive is granted the City, its employees and agents for purposes of providing the Owners and the Property with public services as shall be provided by the City of Chicago from time to time to the Owners.

**3.04 Owners' Easements.** (a) Upon the conveyance of title of the Private Drive to the Association, the Association hereby grants to the Property Owners, their guests and invitees, but not the public generally, easements for use and enjoyment and ingress and egress from any portions of the Property over, upon, and across the Private Drive, or portions thereof, and shall have the power to grant such easements or licenses for such other purposes as may be appropriate to such Persons, and upon such terms and conditions, at such costs, if any, and for such duration as the Association deems appropriate.

(b) Each Property Owner shall maintain those portions of his or her property which are subject to easements granted hereunder except as otherwise provided herein, provided the Association, in its sole discretion, shall have the authority to assume any such costs as it deems appropriate.

(c) Notwithstanding any provision herein to the contrary, the easements created under this Section shall be subject to the right of Declarant to execute all documents and do all other acts and things affecting the Private Drive which, in the Declarant's opinion, are desirable in

connection with Declarant's rights hereunder, provided any such document or act or thing is not inconsistent with the property rights of any Owner. Declarant reserves for itself and the Developer the right to use any portion of the Private Drive as it deems necessary in connection with the sale or rental of Improvements being constructed or to be constructed within the Property, including but not limited to parking for sales personnel and sales prospects.

**3.05 General Provisions.** All easements described in this Declaration are perpetual non-exclusive easements appurtenant, running with the land. They shall at all times inure to the benefit of and be binding on the Declarant, the Owners, the entities referenced herein and the mortgagees from time to time of any Townhome and their respective heirs, administrators, executors, personal representatives, successors and assigns.

## **ARTICLE FOUR**

### **USE, OCCUPANCY AND MAINTENANCE OF THE PROPERTY**

**4.01 Maintenance, Repair and Replacement of Townhouses.** Each Owner shall furnish and be responsible, at his own expense, for all of the maintenance, snow and ice removal, repairs and replacements for his Townhouse and shall keep his Townhouse in good condition and repair. This obligation shall include the maintenance, repairs and replacements of all exterior surfaces of a Townhouse, including windows, doors, exterior walls, chimneys, walks, driveways, decks and any other Improvements located on the Townhouse owned by an Owner. In the event any Townhouse is damaged or destroyed, the Owner shall replace, repair and/or restore the Townhouse to substantially the same condition and appearance as existed prior to such damage or destruction.

**4.02 Party Walls and Shared Facilities.** To the extent not inconsistent with the provisions of this Section 4.02, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply to all party walls and other shared facilities such as roofs and exterior walls. The cost of reasonable repair and maintenance of a party wall or shared facility shall be shared by the Owners who make use of the party wall or shared facility in proportion to such use or by the ratio of square footage of the townhome in relation to the square footage of the other townhomes. The Association shall have the sole discretion in determining the method to be used in the allocation of the repair and maintenance of the party wall and shared facility. If a party wall or shared facility is destroyed or damaged by fire or other casualty, any Owner who has used the party wall or shared facility may restore it, and if the other Owner thereafter makes use of the party wall or shared facility, the other Owner shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of the Owner who restores such party wall or shared facility to call for a large contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions. An Owner, who, by his negligent or willful act, causes any party wall or shared facility to be exposed to the elements, or any roof or ancillary structure to be damaged shall bear the entire cost of repair and restoration and of

furnishings the necessary protection against such elements. The right of any Owner to contribution from any other Owner under this Section 4.02 shall be appurtenant to and run with the Townhouse owned by the Owner entitled to contribution and shall pass to the successors in title of such Owner entitled to such contribution.

**4.03 Roofs.** The roofs on the Townhouses shall be maintained and repaired by the Association. An Owner or his agents and invitees, who, by his negligent or willful act, causes any roof or ancillary structure to be damaged or to be exposed to the elements, shall bear the entire cost of repair and restoration and of furnishings the necessary protection against such elements. If, in the opinion of the Architectural Control Committee, it becomes necessary to replace the roofs (other than as a result of damage or destruction from a casualty or similar occurrence), then the Association shall be responsible for such replacement. The Association shall, upon an appropriate vote of the Board and membership of the Association, levy such special assessments or allocate capital reserves for the purpose of such roof replacement. The cost of repair, maintenance and replacement of the roof shall be shared by the Owners, equally or in the proportion as determined by the ratio of the square footage of the townhome in relation to the square footage of the other townhomes. The Association shall have the sole discretion in determining the method to be used in the allocation of the repair, maintenance and replacement of the roof.

**4.04 Architectural Control.** Except as set forth in Section 4.05, from and after the construction by Developer of any Townhouse or other Improvements, no building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration to the exterior of a Townhouse be made (including, but not limited to, change of color, patios, windows, doors, storm doors and screens), until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Developer. Notwithstanding the foregoing, no chain link fence of any kind shall be installed, erected or maintained upon the Property. In the event the Developer fails to approve or disapprove such design and location within forty-five (45) days after said plans and specifications have been submitted to it, approval will not be required and this Section shall be deemed to have been fully complied with. All such plans shall be submitted to the Developer prior to submitting same to the City of Chicago, if applicable.

**4.05 Extinguishment of Rights.** The rights set forth in Section 4.04 shall vest solely in the Developer until such time as (i) the Developer voluntarily relinquishes such rights in favor of the Architectural Review Committee; or (ii) all Townhouses have been deeded to Owners other than the Developer, whichever event shall first occur. After the Developer no longer has such right, the powers and authority granted in Article Four shall vest in the Architectural Review committee.

**4.06 Residential Use Only.** Townhouses shall be used only as a residence and no industry, business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any part of the Property; provided, however that no Owner shall be precluded,

with respect to his Townhouse from (i) maintaining a personal professional library, (ii) keeping his personal business records or accounts therein, or (iii) handling his personal business or professional calls or correspondence therefrom.

**4.07 Decorating.** Each Owner shall furnish and be responsible for, at his own expense, all the decorating of the exterior (subject to the approvals required by Section 4.04) and interior of his own Townhouse from time to time, including painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furnishings and interior decorating, and shall be responsible for doing all such work in accordance with all applicable codes, laws and regulations.

**4.08 No Signs.** Owners shall not cause or permit anything to be placed on the outside walls of a Townhouse and no sign, awning, canopy, shutter or antenna shall be affixed to or placed upon the exterior walls or roof or any part thereof without the prior consent of the Developer or the Architectural Review Committee, as applicable.

**4.09 Pets.** No animals of any kind shall be raised, bred, or kept in any Townhouse, except that dogs, cats, or other household pets may be kept in Townhouses, provided they are not kept, bred or maintained for any commercial purpose and provided such pets shall not be permitted to disturb the peaceful use and enjoyment of other Townhomes by Owners and Occupants in the development.

**4.10 Proscribed Activities.** No illegal, noxious or offensive activity shall be carried on in any Townhouse nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Owners or Occupants.

**4.11 No Unsightly Uses.** No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Property. The Townhomes shall be kept free and clean of rubbish, debris, and other unsightly material. No temporary building, trailer, garage or building in the course of construction or other temporary structure situated on the Property shall be used, temporarily or permanently, as a residence.

**4.12 Operation of Equipment.** No Owner shall overload the electrical wiring in any Townhome or operate any machines, appliances, accessories or equipment in such manner as to cause an unreasonable disturbance to others.

**4.13 Trash.** No lumber, metals, bulk materials, refuse or trash shall be kept, stored or allowed to accumulate, except building materials during the course of construction of any approved structure, on the Property. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers shall be stored in such a manner so that they cannot be seen from adjacent and surrounding property.

**4.14 Pipes.** No water pipes, sewer pipes or drainage pipes shall be installed or maintained on the Property above the surface of the ground, except hoses and moveable pipes used for irrigation purposes and sump pump discharges.



**4.15 Flagpoles.** No flagpoles shall be installed upon any portion of any Townhome.

**4.16 Recreational Vehicles.** No trailers, boats, motor homes or other recreational vehicles shall be placed or parked upon any portion of any Townhouse. No commercial vehicles shall be permitted unless they may be are parked in the garage of the townhouse.

**4.17 Advertising by Owner.** No sign or other advertising device of any nature shall be placed upon any Townhouse except name and address plates or address plates, none of which shall exceed 120 square inches, without the prior written consent of the Developer or the Architectural Review Committee. The Developer may establish other criteria without respect to form and location of such signs. Notwithstanding the foregoing, the Developer reserves the right to erect such signs, whose sign and design shall not be subject to the foregoing restrictions, as it may deem necessary on Townhouses until all Townhouses proposed to be built on the Property are sold by the Developer.

**4.18 Drainage.** No person shall obstruct, alter or in any way modify the established drainage pattern from on or over a Townhome, nor shall any person obstruct, alter or in any way modify any drainage devices and/or facilities now installed or to be installed by Developer. Developer reserves the right, but not the obligation, to enter upon any Townhouse to correct, as it may deem necessary, any drainage condition.

**4.19 Parking Assignment and Restrictions** The two Parking Spaces located within the Private Drive are legally described in **Exhibit A** attached hereto and made a part hereof. Developer shall have the unrestricted right to assign the Parking Spaces to Owners by amendment to the declaration prior to the election of the Initial Board of Mangers. The Owner of the Parking Space shall have, as an easement with the right and benefit appurtenant to his or her ownership of a Townhouse, that certain Parking Space as herein designated and assigned for the Owner's perpetual and exclusive use to park automobiles. Any such deed, lease, mortgage or other instrument purporting to affect a Townhouse without also including a reference to the easement for the Parking Space appurtenant thereto shall be deemed and taken to include the said easement for Parking Space and the perpetual and exclusive use thereof even though not expressly mentioned or described therein. Owners of the Parking Spaces may only exchange, lease or sell his or her Parking Space to another Owner. The exchange and sell of Parking Spaces shall not be effective until the Owners involved record their transfer by amending this provision of the declaration with the Cook County Recorder of Deeds. Owner shall not permit vehicles to be parked in a manner which blocks or impedes pedestrian and auto traffic along the Private Drive and walkway area. The Board of Directors may proscribe such rules and regulations with respect to the Parking Spaces as it deem reasonably fit; provided, however, such rules and regulations shall be applied to, and be enforced against, all Owners and occupants on a nondiscriminatory basis. The Board is hereby granted authority to employ a towing company to remove vehicles violating the foregoing parking restriction at the expense of the Owner of the Townhome violating the parking restriction.

The legal description of the parking spaces is not available at the time this Declaration is filed. However, the Declarant hereby reserves unto itself and the Developer, the right, from time to time, as further data becomes available, to amend this Declaration so as to set forth the legal description of the parking spaces. In furtherance of the foregoing, a power coupled with an interest is hereby granted to the Declarant, acting by or through its duly authorized officers, its successors or its designee, and to the Developer, its successors and assigns and their agents, and each of them singly, as attorney-in-fact, to amend the Declaration, as described above. Each deed, mortgage or other instrument with respect to a Townhouse and the acceptance thereof shall be deemed a grant of such power to each of said attorneys-in-fact, and acknowledgment of and consent to such power, and shall be deemed to reserve to each of said attorneys-in-fact the power to amend the Declaration as described above.

**4.20 Insurance** Each Owner shall procure and maintain in full force at all time insurance covering the entire Owner's Townhouse Structure providing all the protections afforded by, the insurance generally described as fire, extend coverage, additional extended coverage, vandalism and malicious mischief, to one hundred percent (100%) of the full insurance value thereof, with loss payable on the basis of the cost of replacement without deduction for depreciation, less a deductible amount of no more than five hundred (\$500.00) dollars. A certificate of insurance evidencing such coverage shall be furnished to the Association within 10 days after such request. In the event the Townhouse Structure or any portion thereof shall be damaged or destroyed by fire or other casualty, the Owner shall cause it to be repaired, restored, or rebuilt, as the case may be, as rapidly as possible to at least as good a condition as existed immediately prior to such damage or destruction and in the same architectural style and design as originally constructed by the Developer and shall conform in all respects to the laws or ordinances regulating the construction of buildings in force at the time of such repair or reconstruction. In the event of such damage or destruction of a Townhouse Structure, the Owner and the holder of the mortgage encumbering the Townhouse Structure shall allow the proceeds of any insurance required hereby to be utilized in restoring the Townhouse Structure pursuant to the terms of this Agreement.

**4.21 Maintenance of Common Water and Sewer System.** The Association shall be responsible for the maintenance and repair of the water and sewer system, including repair of asphalt drive, aprons and walk ways within the Private Drive, located within the Private Drive to the respective connections in the public street with the City of Chicago water and sewer system. Each Owner shall at all times be responsible for the repair, maintenance or reconstruction of the private portion of the sewer and water system upon or leading from his Lot to the point of connection of same with the common sewer and water system in the Private Drive.

## **ARTICLE FIVE**

### **ADMINISTRATION**

**5.01 Association.** The Association has been or will be formed as an Illinois not-for-profit corporation under the General Not-For-Profit Corporation Act of the State of Illinois

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having the name "CHINA PLACE AND WELLS STREET TOWNHOMES ASSOCIATION" (or one similar thereto) and shall, to the extent hereafter provided and subject to the limitations hereafter contained, be the governing body of the use, maintenance and repair of the Private Drive, the common elements located therein and the common roofs. The Association shall not be deemed to be conducting a business of any kind, and all funds received by it shall be held and applied by it in trust for the use and benefit of Owners in accordance with the provisions of this Declaration.

**5.02 Membership.** Every Owner of a Townhome shall be a member of the Association and such membership shall automatically terminate when he or she ceases to be an Owner. Membership is appurtenant to and shall not be separated from ownership of a Townhome. Each Owner by acceptance of a deed or other conveyance of a Townhome thereby becomes a member, whether or not this declaration of such membership is made a part of, incorporated by reference or expressed in said deed or conveyance. Continuing membership in the Association shall be compulsory and no Owner of any interest in a Townhome shall have any right or power to disclaim, terminate, or withdraw from his or her membership in the Association or any of the obligations as such member, any such purported disclaimer, termination or withdrawal being null and void. There shall be one person with respect to every Townhome who shall be entitled to vote at any meeting of the Members. Such person shall be known as a "voting member". Such voting member may be the Owner or one of the group comprising Owner of a Townhome or may be some person designated by such Owner to act as proxy on his or her behalf and who need not be an Owner. Such designation shall be made in writing to the Board and shall be revocable at any time by notice to the Board by the Owner.

**5.03 Voting Rights.** The Association shall have two classes of voting members:

**Class A:** Class A voting members shall be all Owners with the exception of the Developer and each class A voting member shall be entitled to one vote for each Townhome owner by him or her;

**Class B:** The Class B voting member shall be the Developer who shall at any given time be entitled to three (3) times the number of votes to which the Class A voting members shall be entitled at such time. The Developer shall cease to be a Class B voting member and shall become a Class A voting member upon the first to occur of any of the following dates:

(a) The date upon which the Developer and Trustee shall have sold and conveyed title to ninety (90%) percent of the total number of the Townhomes within the Property, or

(b) The date upon which the Developer elects to convert its Class B membership to Class A membership by written notice of such election to the Association.

**5.04 Qualifications of Board.** For a period commencing on the date this Declaration is executed and ending upon the qualification of the Board elected at the initial meeting of voting members, the Developer shall have the right to designate and select the persons who

shall serve as members of the Board or elect to exercise itself the powers of the Board as provided herein. Except for directors so designated by Developer, each member of the Board shall be one of the Owners and shall reside in a Townhouse; provided, however, that in the event an Owner is a corporation, partnership, trust or other legal entity other than a natural person, then any designated agent of such corporation, trust, partnership or other legal entity, shall be eligible to serve as a member of the Board, so long as any such agent (other than a person designated by Developer) resides in Townhouse.

**5.05 Election of the Board.** The initial Board designated by the Developer shall consist of three directors who shall serve without compensation. Such initial Board shall serve for a period commencing on the date the Association is formed by the filing of the Articles of Incorporation therefor in the office of the Secretary of State of Illinois and ending upon the qualification of the Board elected at the initial meeting of voting members held as provided in Section 5.06 hereof. At the initial meeting held as provided in Section 5.06 hereof, the voting members shall elect three (3) Board members who shall serve until the first annual meeting. In all elections for members of the Board, each voting member shall be entitled to vote on a non-cumulative voting basis and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected except as otherwise provided herein. Each voting member shall be entitled to cast the number of votes equal to the positions on the Board being filled by such election. Members of the Board elected at the initial meeting shall serve until the first annual meeting. At the first annual meeting of the voting members, three (3) Board members shall be elected. The election as between candidates receiving the same number of votes shall be determined by lot. All Board members shall serve in office for a term of two (2) years and may be re-elected to office upon the expiration of their terms. The Board shall act by majority vote of those present at its meeting when a quorum exists. Meetings of the Board may be called, held and conducted in accordance with such regulations as the Board may adopt. Two members of the Board shall constitute a quorum.

**5.06. Meeting of Voting Members.**

(a) Meetings of voting members shall be held at such places and times as shall be designated in any notice of a meeting by the Board. The presence in person or by proxy at any meeting of the voting members having a majority of the total votes shall constitute quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the voting members at which a quorum is present upon the affirmative vote of the voting members having a majority of the total votes present at such meeting. In the event that a quorum is not present at any meeting of the voting members, another meeting may be called by notice from the Board and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting; provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

(b) The initial meeting of voting members shall be held upon not less than then (10) days written notice from the Developer. Such notice must be given no later than sixty (60) days after the sale and conveyance of title to ninety (90%) of the total number of Townhouses

which maybe constructed by Developer on the Property, but such notice may, at the discretion of the Developer, be given earlier. Thereafter, there shall be an annual meeting of the voting members on the second Tuesday of October of each succeeding year thereafter or at such other reasonable date and at such time, and at such place, as may be designated by written notice from the Board.

(c) Special meetings of the voting members may be called at any time for any reasonable purpose on not less than ten (10) days notice from a majority of the Board or the voting members holding one-fourth (1/4) of the total votes.

(d) Notices of meetings may be delivered personally or by mail to the voting members, addressed to each such voting member at the address given by him to the Board, or if no address shall be given, addressed to such voting member to the address of his Townhouse.

**5.07 General Powers of the Board.** The Board shall have the following powers subject to the provisions of this Declaration:

(a) To hold legal title to, and to adopt rules and regulations governing the use, maintenance and administration of the Private Drive for the health, comfort, safety and general welfare of the Owners and occupants thereof.

(b) To provide for maintenance, repair and replacement with respect to the Private Drive, on the terms provided for herein.

(c) To enter into contracts on behalf of, and to purchase or secure in the name of the Association any materials, supplies, insurance (including directors and officers liability insurance), equipment, fixtures, labor, services (including the services of accountants and attorneys) required by the terms of this Declaration, or which in its reasonable opinion shall be necessary or proper for the operation or protection of the Association and its members and for the enforcement of the provisions of this Declaration.

(d) To enter upon, and to have its contractors, subcontractors and agents enter upon, any Townhouse as may be required to exercise all of the rights and obligations granted to or imposed upon its pursuant to this Declaration or to correct any condition that in the Board's judgment is a nuisance or is damaging to any Owner or Occupant.

(e) To enter into contracts, maintain one or more bank accounts (granting authority as the Board shall desire to one or more persons to draw upon such accounts), and generally, to have all the powers necessary and incidental to the operation and management of the Association.

(f) To adjust the amount, collect and use any insurance proceeds to repair damaged or replace lost property; and if proceeds are insufficient to repair damaged or replace lost property, to assess the appropriate Members as provided herein in proportionate amounts to cover the deficiency.

(g) To take such action as may be required to enforce the provisions of this Declaration and the rules and regulations made hereunder.

(h) To grant non-exclusive easements in respect to, and to dedicate to or as directed by governmental authorities, portions of the Private Drive and to execute and cause to be recorded such instruments as may be required in respect thereto.

(i) To borrow money in the name of the Association to provide for the maintenance, repair or replacement of the Private Drive, however, that the Board shall not secure any such borrowings by encumbering the Private Drive with a mortgage or trust deed without the affirmative vote of at least 66-2/3% of the votes of all the voting members of the Association. The Board shall, however, have the power to secure such borrowings by pledging and granting a security interest in the assessments due the Association hereunder.

(j) To enter into a contract for the management of the Property with a professional manager or management company on such reasonable terms as the Board shall determine; provided that any such contract shall be cancelable by the Association at the end of two years from the date of recording of this Declaration.

(K) To have standing and capacity to act in the representative capacity in relation to matters involving the Private Drive of the Association on behalf of the Owners as their interests may appear.

(l) To exercise any and all powers, rights and authorities provided in the Illinois General Not-For-Profit Corporation Act, as amended from time to time.

**5.08 Meetings of the Board.** The Board shall meet at least semi-annually on the first Tuesday of October and April during the first year following the initial meeting of voting members held as provided in Section 5.06 hereof. Thereafter, meetings shall be scheduled by the Board at such times as its members shall determined to be necessary to satisfy the duties, obligations and requirements of the Board created by this Declaration. Meetings of the Board shall be open to all Owners except for the portion of any meeting held: (a) to discuss litigation when an action against or on behalf of the Association has been filed and is pending in a court or administrative tribunal, or when the Board finds that such action is probable or imminent; (b) to consider information regarding appointment, employment or dismissal of an employee; or (c) to discuss violations of rules and regulations of the Association or unpaid common expenses owed to the Association. any Owner may record the proceeds at meetings required to be open, by tape, film or other means; provided that the Board may prescribe reasonable rules and regulations to govern the right to make such recordings. Notice of such meetings shall be mailed or delivered at least 48 hours prior thereto, unless a written waiver of such notice is signed by the persons entitled to such notice before the meeting is convened.

**5.09 Notice of Board Meeting Concerning Budgets or Assessments.** Each Owner shall be given written notice mailed or delivered no less than ten (10) and more than thirty (30)

days prior to any meeting of the Board concerning the adoption of the proposed annual budget or any increase, or establishment of an assessment.

**5.10 Annual Accounting.** The Board shall annually supply to all Owners an itemized accounting of the common expenses for the preceding year actually incurred or paid, together with a tabulation of the amounts collected pursuant to the budget or assessment. This accounting shall show the net excess or deficit of income over expenditures.

**5.11 Proposed Budget.** Each Owner shall be given, at least ten (10) days prior to the adoption by the Board, a copy of the proposed annual budget.

**5.12 Insurance on Common Area.** The Board shall have the authority to and shall obtain insurance for the Common Areas as follows:

(a) Comprehensive General Liability insurance covering bodily injury and property damage insuring against hazards of premises/operation, death, personal injury liability, independent contractors and other extensions as deemed necessary by the Board. Such insurance shall provide limits of liability as deemed desirable by the Board, but in no event for less than One Million Dollars (\$1,000,000.00). Such policy shall be endorsed to cover cross-liability claims of one insured against the other.

(b) Worker's Compensation and Employer Liability (minimum amount \$100,000) as necessary to comply with applicable laws.

(c) Fidelity bond insurance covering any officer, directors, managing agent or other person who handles or are responsible for funds of the Association, in an amount necessary to comply with the insurance requirements of the Federal National Mortgage Association.

(d) Such other insurance in such amounts as the Board shall deem desirable.

The premiums for all of the insurance coverage described in this Section 5.12 shall be paid from the assessments described herein.

**5.13 Liabilities.** The Developer, its partners, the Board, the Association, members of the Board, officers of the Association, the Architectural control Committee, the agents (including any management agent), and employees of any of them (all of the above hereinafter collectively called the "Protected Parties") shall not be liable to the Owners or any other person for any mistake of judgment for any acts or omissions of any nature whatsoever in their respective positions, except for such acts or omissions found by a court of competent jurisdiction to constitute willful misfeasance, gross negligence, fraud or as otherwise, provided in this Declaration. All Owners, jointly and severally, shall indemnify, hold harmless, protect and defend any and all of the Protected Parties against all claims, suits, losses, damages, costs and expenses, including, without limitation, attorneys fees and amounts paid in reasonable settlement or compromise incurred in connection therewith.

**5.14 Books and Records.** The Board shall maintain the following records of the Association available for examination and copying during normal business hours by any Owner or their mortgagees and their duly authorized agents or attorneys:

(a) Copies of the recorded Declaration, other duly recorded covenants and any amendments, articles of incorporation of the Association, annual reports and any rules and regulations adopted by the Association or its Board. Prior to the organization of the Association, the Developer shall maintain and make available the records set forth in this subparagraph for examination and copying.

(b) Records of the receipts and expenditures affecting the Common Areas, specifying and itemizing the maintenance and repair expenses of the Common Areas and any other expenses incurred, and copies of all contracts, leases, or other agreements entered into by the Association; and

(c) The minutes of all meetings of the Association and the Board. The Association shall maintain these minutes for a period of not less three (3) years.

A reasonable fee may be charged by the Association or its Board for the cost of copying.

**5.15 Documents Availability Upon Resale.** In the event of any resale of a Townhouse by an Owner other than the Developer, such Owner may obtain from the Board and shall make available for inspection to the prospective purchaser, upon demand, the following:

(a) A copy of this Declaration and any other rules and regulations of the Association.

(b) A statement of any capital expenditures anticipated by the Association within the current or succeeding two fiscal years.

(c) A statement of the status and amount of any reserve for replacement fund and any portion of such fund earmarked for any specified project by the Board.

(d) A copy of the statement of financial condition of the Association for the last fiscal year for which such statement is available.

(e) A statement of the status of any pending suits or judgments in which the Association is a party.

(f) A statement setting forth what insurance coverage is provided for all Owners by the Association.



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(g) An officer of the Association or such other party designated by the Board shall furnish the above information when requested to do so in writing and within 30 days of the request.

A reasonable fee covering the direct out-of-pocket cost of providing such information and copying may be charged by the Association or its Board to an Owner for providing such information.

**5.16 Officers and Their Duties.** The Officers of the Association shall be a President, a Secretary, a Treasurer and such other officers as the Board shall see fit. All such officers shall be selected from members of the Board. The officers of the Association shall be elected annually by the Board at the regular annual meeting of the Board. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as is convenient. Vacancies may be filled or new offices created and filled by any meeting of the Board. Each officer shall hold office until his successor shall have been duly elected and shall have qualified. Any officer may resign at any time by giving written notice to the Board. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board for the unexpired portion of the term. The office of Vice President may be kept vacant for any period of time if the Board of Directors declines to fill such office during such period. Any one individual may hold more than one office, provided, however, that no one individual simultaneously may hold the Offices of President and Treasurer.

The duties of the officers are as follows:

(a) **President.** The President shall be the chief executive officer of the Association and shall, in general, supervise and control all of the business and affairs of the Association. He or she shall preside at all meetings of the members and of the Board of Directors. He or she may sign, with the Secretary or any other proper officer of the Association authorized by the Board of Directors, any deeds, mortgages, contracts, easements or other instruments which the Board of Directors has authorized to be executed and, in general, shall perform all duties incident to the office of president and such other duties as may be prescribed by the Board of Directors from time to time.

(b) **Treasurer.** The Treasurer shall keep the financial records and books of account of the Association and shall perform all duties incident to the office of treasurer and such other duties as from time to time may be assigned by the President or by the Board.

(c) Secretary. The Secretary shall keep minutes of the meetings of the members and of the Board and, in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the President or by the Board.

## 5.17 ARCHITECTURAL CONTROL COMMITTEE

(a) Membership. The Architectural Control Committee shall consist of three Owners who shall be appointed by the Board. Until the initial meeting of voting members, the Developer shall act in lieu of the Architectural Control Committee.

(b) Powers and Duties. The Architectural Control Committee shall have the following powers and duties:

(i) To review requests by Owners for approval of any exterior addition to or modification or alteration to a Townhouse or the Architectural Control Committee and, subject to final approval thereof by the Board, to render decisions thereon.

(ii) To propose to the Board rules, regulations and procedures concerning exterior maintenance, repair, landscaping fences and the enforcement of the provisions of this Declaration in relation thereto.

(iii) The Architectural Control Committee shall have such other powers and duties as the Board shall from time to time delegate.

(c) Procedures. Any matter requiring the approval of the Architectural Control Committee shall be submitted to the Architectural Control Committee in writing and, if approved of any alteration or addition to a Townhouse shall be requested, shall include preliminary design drawings, plans and specifications, elevations, landscaping schemes and descriptive materials showing the size, color, design, configuration, height, shape and materials of such alteration or addition. Within a reasonable time, not exceeding thirty (30) days after receipt of all such items, the Architectural Control Committee shall advise such Owner and the Board in writing.

(i) Whether such Owner's request has been approved or denied and if denied, the specific reasons therefor; or

(ii) Whether the Architectural Control Committee requires additional information, plans or other materials to render a decision, in which case such additional items shall be furnished as expeditiously as possible.

If additional items shall be required pursuant to subsection (b) above, within a reasonable period of time not exceeding ten (10) days from the date of receipt of all such items, the Architectural Control Committee shall advise such Owner and the Board in writing whether

such Owner's request has been approved or denied and if denied, the specific reasons therefor. If such Owner's request for approval shall have been denied, such Owner shall have the right to appeal the decision of the Architectural Control Committee to the Board pursuant to Section 5.17(d) hereof.

(d) Right of Appeal. Any adverse decision of the Architectural Control Committee may be appealed to the Board, which shall render a final decision as to the matter in question. An Owner desiring to appeal shall so advise the Board in writing. The Board shall consult with the Architectural Control committee and such Owner, shall review the plans and other materials submitted by such Owner, and shall render a written decision as to the matter under consideration as expeditiously as practical. In rendering its decision, the Board shall take into consideration the criteria set forth in Section 7.05, the matter under review, and such other factors as the Board deems relevant in respect to the overall enhancement and presentation of the value and desirability of the Property.

(e) Review Criteria. In evaluating requests by Owners for approvals required of the Architectural Control Committee hereunder, the factors to be considered by the Architectural Control Committee shall include the following:

(i) The architectural integrity and compatibility of any proposed exterior modification to a Townhouse with the design, color scheme and materials of such Townhouse as originally constructed.

(ii) The aesthetic effect of any proposed modification to exterior fences or exterior lighting.

(iii) The Architectural Control Committee shall also consider such other factors as it deems relevant in assessing the overall effect of the Owner's request upon the maintenance and operation of the Property.

5.18 By-Laws. This Article Five shall constitute, and be deemed to be, the By-Laws of CHINA PLACE AND WELLS STREET TOWNHOMES ASSOCIATION. Provisions of these By-Laws may be amended by affirmative vote of two-thirds (2/3) of Townhouse Owners in the manner set forth in Section 8.03 hereof.

## ARTICLE SIX

### ASSESSMENTS

**6.01 Personal Obligation.** Each Owner (except for the Declarant and Developer), by acceptance of a deed for a Townhouse, whether or not it shall be so expressed in any such deed or other conveyance for such townhouse, hereby covenants and agrees to pay to the Association such assessments and fees as are levied pursuant to the provisions of this

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Declaration. Such assessments and fees, whether special or otherwise, not paid when due, together with interest thereon at the rate of ten (10%) percent per annum, late fees (as the Board shall, from time to time, determine), and costs of collection, including attorneys' fees incurred in respect thereto whether or not suit shall be instituted, shall be a charge and a continuing lien upon the Townhouse, against which such assessment is made. Furthermore, each such assessment, together with such interest, costs, late fees and other fees, shall be the personal obligation of the person who was the Owner of such Townhouse on the date upon which such assessment became due. No Townhouse or any interest therein may be transferred, sold or beneficial interest transferred (where title is held in land trust) by its Owner until such time as all outstanding assessments, together with any interest, costs, late fees and other fees, are paid to the Association, and any such transfer or sale in violation of this restriction shall be subject to the provisions hereof. The Developer or Declarant, to the extent that it shall be an Owner of any Townhouses which are leased to any person, shall, as to each such leased Townhouse, be subject to the provisions of this Article from and after the first day of the month in which the Developer first receives rent for such Townhouse. Except as provided in the preceding sentence, the Developer and Declarant shall not be liable for the payment of assessments hereunder, and portions of the Property owned by the Developer or Declarant shall not be subject to liens hereunder, provided, however, that the Developer shall pay the actual costs incurred by the Association attributable to the maintenance and repair of those portions of the Property owned by the Developer or Declarant.

**6.02 Purpose of Assessment.** The assessments and fees levied by the Association shall be used for the following purposes: (a) paying the cost of maintenance, repair and insurance of the Private Drive, including the cost of labor, equipment, services (including utilities and security services, accountants', attorneys' and other professional fees, licenses and permits) and the materials in connection therewith; (b) the establishment of such reasonable reserves, if any, as the Board deems appropriate, (c) the performance of the duties of the Board as set forth in this Declaration, including the enforcement of the provisions thereof, (d) the payment of real estate taxes and special assessments for the Private Drive, and (e) in general, carrying out the purposes of the Association as stated in this Declaration.

**6.03 Annual Assessments.** Each year, on or before December 1, the Board shall estimate the total amount (the "Aggregate Annual Assessment") necessary to provide the materials and services which will be required for the ensuing calendar year in the operation of the Association and shall notify each Owner in writing as to the amount of the Aggregate Annual Assessment with a reasonable itemization thereof and of the amount thereof allocable to such Owner. Except as provided in this Declaration, each Owner (with the exception of the Developer and Declarant unless otherwise hereunder provided) shall be allocated that portion of the Aggregate Annual Assessment as shall be determined either by dividing the Aggregate Annual Assessment by the total number of Townhouses on the Property or in the proportion as determined by the ratio of the square footage of the townhome in relation to the square footage of the other townhomes as reasonably determined by the Board. On or before January 1 of the ensuing year, and on the first day of each and every month of said year, each Owner shall be personally liable for and obligated to pay one-twelfth (1/12) of the portion of the Aggregate Annual Assessment allocated to such Owner unless it is determined by the Board that such

payments shall be made on a different basis during the calendar year. Upon the creation of the Association, the Board shall determine an initial Aggregate Annual Assessment for the period commencing with the incorporation date of the Association and the end of the calendar year in which it is incorporated.

**6.04 Special Assessments.** In addition to the annual assessments authorized pursuant to Section 6.03, the board may at any time or from time to time levy special assessments. Special assessments shall be levied for the purpose of defraying, in whole or in part, the cost incurred by the Association for any repair, replacement, maintenance, serve, labor, materials or capital improvement, not provided for in the Aggregate Annual Assessment for the then current calendar year. Except for special assessments which in the aggregate shall not exceed in any one twelve-month period the sum of \$200.00 per assessed Townhouse, any special assessment shall first be approved by the affirmative votes of not less than one-half (1/2) of the votes cast at the annual or a special meeting of the Members called and held in accordance with the provisions hereof. Special assessments shall be allocated to each Owner in the same manner as such Owner's respective share of the Aggregate Annual Assessment unless the Board shall determine that the benefits of any expense or any part thereof accrue to fewer than all of the Owners or Townhouses or to certain Owners or Townhouses in a greater degree to fewer than all of the Owners or Townhouses or to certain Owners and Townhouses in a greater degree than to other Owners and Townhouses, in which case the Board shall serve notice on the responsible parties of any such special assessment, or part thereof, which notice shall consist of a written statement setting forth the reason therefor, the amount and date on which such assessment (or installment thereof) shall become due and payable. The Developer shall be liable for the payment of special assessments on only those Townhouses for which the Developer is obligated to pay a regular assessment.

**6.05 Notice and Quorum.** Written notice of any meeting called for the purpose of authorizing any special assessment requiring approval pursuant to Section 6.04 hereof shall be sent to all members of not less than ten (10) days nor more than thirty (30) days in advance of the meeting. At such meeting, the presence in person or by proxy of Members entitled to cast at least one-half (1/2) of all the votes shall constitute a quorum.

**6.06 Proof of Payment.** Upon written demand of an Owner or mortgagee at any time, the Association shall furnish such Owner or mortgagee a written certificate signed by an officer of the Association setting forth whether there are any unpaid annual or special assessments, interest, costs, late fees or other fees levied against such Owner's Townhouse. Such certificate shall be conclusive evidence of payment of any annual or special assessments, interest, costs, late fees or other fees not stated therein as unpaid.

**6.07 Nonpayment of Assessments.** Any assessment which is not paid when due shall be deemed delinquent. If an assessment is not paid within ten (10) days after the delinquency date, such assessment shall bear interest at the rate provided in Section 6.01 from the delinquency date until paid, and the Board may impose a late charge as provided in Section 6.01. In the event of the failure of any Owner to pay any assessment, maintenance charge, interest charge, late fee or other fees or costs of collection, when due, the amount thereof shall

constitute a lien on the Townhouse of such Owner. The Board shall, in the name of and on behalf of the Association, have all rights and remedies to enforce such collections as shall from time to time be permitted by law, including bringing an action at law or in equity against such Owner and foreclosing the aforesaid lien. All expenses of the Association in connection with such action or proceedings, whether or not suit shall be instituted, including attorney's fees and court costs and other fees and expenses shall be charged to and assessed against such Owner) and shall be added to and deemed part of his assessments, and the Association shall have a lien for all of the same upon the Townhouse of such Owner.

**6.08 Subordination of Lien to Taxes and Mortgage.** The lien of the assessments provided for herein shall be subordinate to (a) taxes, special assessments and special taxes theretofore or thereafter levied by any political subdivision or municipal corporation of this state or other state or federal taxes which by law are a lien on such Townhouse prior to pre-existing recorded encumbrances thereof, and (b) the lien of any prior, recorded mortgage or trust deed on a Townhouse.

**6.09 Exemption from Assessment on Townhome Owned by Developer and Declarant.** In order that those townhouses which are improved and conveyed or leased by Developer, Declarant or its agents may, with reasonable promptness, receive the benefits of maintenance by the Association for the enjoyment of the residents of the Property, and also be subject to assessments therefor, and so as not to discourage the Developer and Declarant from voting for such assessments at such times as the Developer and Declarant may still own a substantial number of unoccupied Townhouses, and inasmuch as assessments levied against such Townhouses impose a burden on the Developer and Declarant without the Developer and Declarant desiring, or receiving the benefits of maintenance upon such Townhouses as may from time to time be provided by the Association. It is therefore expressly provided that no Townhouse owned by the Developer and Declarant shall be subject to the assessments, charges and liens provided for herein until the date upon which such Townhouse shall be conveyed to a bona fide purchaser or leased to any person who shall have commenced to pay rental therefor or sold pursuant to installment contract or articles of agreement for deed; provided, however, that each year, until the initial meeting of the elected Board pursuant hereto, the Developer shall contribute to the Association the amount, if any, by which the operating expenses of the Association incurred or paid during such year (exclusive of any amounts allocated to reserves) exceed the gross revenues of the Association during such year.

Upon the conveyance or leasing by Developer or Declarant of a Townhouse which was theretofore entitled to the foregoing exemption from assessments, such Townhouse and the Owner thereof shall immediately become subject to the payment of all assessments and other charges and the liens provided for herein.

**6.10 Delay.** The failure or delay of the Board to prepare or transmit to any Owner an Aggregate Annual Assessment in respect of any calendar year shall not constitute a waiver or release in any manner of such Owner's obligation to pay the monthly assessments or special assessments whenever assessed, and in the absence of any Aggregate Annual Assessment, unless otherwise determined by the Board, such Owner shall continue to pay the Board the

monthly assessments in the installments in force and effect as of the most recent Aggregate Annual Assessment until a new Aggregate Annual Assessment shall become effective.

**6.11 Use of Funds.** All funds collected by the Board hereunder shall be held and expended for the benefit of the Owners and the Associate and for the purposes designated herein.

## ARTICLE SEVEN

### GENERAL

**7.01 Amendment by Developer.** This Declaration may be amended by the Developer in any manner prior to the conveyance by Developer of any Townhouse. The Developer reserves the right to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Association, the Veteran's 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, (ii) to induce any of such agencies or entities (including without limitation any bank or savings association) to make, purchase, sell, insure or guarantee first mortgages covering Townhouses, or (iii) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer to make any change or modification as authorized hereunder on behalf of each Owner and their respective mortgagees as attorney-in-fact for such Owner. Each deed, mortgage, trust deed, or other evidence or obligation affecting a Townhouse and the acceptance thereof shall be deemed to be a grant and acknowledgment of and a covenant and reservation of the power of the Declarant as aforesaid. Such amendment shall become effective upon recording in the office of the Recorder of Deeds of Cook County, Illinois. The right of Developer to act pursuant to rights reserved or granted under this Section shall terminate at such time as the Developer no longer holds or controls title to a Townhouse at the Property.

**7.02 Severability.** Invalidation of all or any portion of any of the covenants, restrictions, easements, conditions, reservations, liens, and charges imposed by this Declaration, by legislation, judgment or court order shall in no way affect any other provisions of this Declaration, all of which shall remain in full force and effect.

**7.03 Amendment.** After the initial meeting of the voting members, the provisions of this Declaration may be amended by an instrument executed and acknowledged by the Board and approved by the Owners of not less than two-thirds (2/3) of the Townhouses which are subject to the provisions of this Declaration. An Amendment shall not be effective until it is recorded in the office of the Recorder of Deeds of Cook County, Illinois.

**7.04 Notices.** Any notice required or permitted to be given under this Declaration and the By-Laws shall be in writing. Any notice hereunder may be served either by prepaid United States mail or by delivery in person; provided, however, that notice of the Developer or Declarant, the Association or the Board may only be served by mail. Any such notice served by mail shall be addressed or delivered as follows:

(1) If to Owner, to the person or persons and addressed as reflected as such Owner on the books of Developer or the Association.

(2) If to any devisee or personal representative of a deceased or incompetent Owner, to such devisee or personal representative at the address of such Owner, as reflected on the books of the Association or to the address of such devisee or personal representative set forth in the records of the court in which the estate of such deceased or incompetent Owner is being administered;

(3) If to the Association: To the Registered Agent

(4) If to the Developer: Parkshore Commons Limited Partnership  
c/o Richview II, Inc.  
3016 S. Halsted Street  
Chicago, Illinois 60608

(5) If to a mortgagee of a townhouse, at the address provided by an Owner for such mortgagee or as otherwise reflected on the books of the Developer or the Association.

The Developer, the Board or the Association may designate different respective addresses by written notice of such change of address to all Owners. All Owners may designate a different address by written notice of such change of address to the Developer, the Association and the Board. Any first mortgagee of a Townhouse may designate a different address by written notice of such change of address to the Developer, the Association and the Board. All notices shall be deemed served three (3) days after such notice was deposited in the United States mail, or on the day and at the time delivered in person.

**7.05 Ownership of Private Drive and Common Facilities.** Title to the Private Drive shall be held initially by the Declarant. Until all the Townhouses have been sold by the Declarant, or sooner at the option of the Declarant, Declarant shall retain such title to the Private Drive. At such time as all the Townhouses are sold, or sooner at the option of the Declarant, title to the Private Drive shall be transferred by the Declarant to the Association by Declarant's quitclaim deed and other appropriate documentation.

**7.06 Titleholding Land Trust.** In the event title to any Townhouse is conveyed to a title holding trust, under the terms of which all power of management, operation and control of such Townhouse remains vested in the trust beneficiary or beneficiaries, then the beneficiary or



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beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Townhouse. No claim shall be made against any such titleholding trustee personally for payment of any lien or obligations hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon such Townhouse and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any trust or any transfers of title to such Townhouse.

**7.07 Duration.** The covenants, restrictions, conditions, reservations, liens and charges imposed or established by or created under this Declaration shall run with and bind the land for a period of forty (40) years from the date of the recording of this Declaration. Failure by the Association or any Owner to so enforce the provision contained herein shall in no event be deemed waiver of the right to do so thereafter. After the expiration of said forty (40) year period, all of such covenants, restrictions, conditions, reservations, liens and charges shall continue to run with and bind the land for successive periods of ten (10) years each unless revoked, changed or amended in whole or in part, by an instrument in writing which is executed by the Owners of not less than two-thirds of the holders of first mortgages on the Townhouses.

**7.08 Conflicts between Declaration and City Ordinances.** In the event there is at any time a conflict between any provision of this Declaration and any provision of the Municipal Code of the City of Chicago or any City Ordinance, rule or regulation, then the provision of the Municipal Code of the City of Chicago or City Ordinance, rule or regulation shall prevail, but only to the extent it is more restrictive than this Declaration.

**7.09 Captions.** The Article and Section headings herein are intend for convenience only and shall not be construed with any substantive effect in this Declaration.

**7.10 Liberal Interpretation.** This Declaration shall be liberally construed so as to facilitate and promote the objectives of the Declaration hereinabove set forth and to protect the integrity of the Development. Narrow, technical and literal construction of this instrument, inconsistent, with the intent and objectives of the Trustee, Developer and Association shall be avoided.

**7.11 Gender, Usage of Singular and Plural Forms, and other Usage.** Whenever the context so requires, sue of the plural form shall include the singular, use of the singular form shall include the plural and any gender shall be deemed to include both genders.

**7.12 No Dedication to Public Use.** Nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, express or implied of all or any part of the Property to or for any public use or purpose whatsoever.

**7.13 Mortgages.** Nothing herein contained shall preclude a bank, savings and loan association, insurance company or lender from holding a mortgage on any Townhouse, and

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such lending institution shall have an unrestricted, absolute right to accept title to the Townhouse in settlement and satisfaction of said mortgage or to foreclose the mortgage in accordance with the terms thereof and the laws of the State of Illinois and bid upon said Townhouse at the foreclosure sale.

**7.14 Trustee Exculpation.** This declaration is executed by Lakeside Bank, in the exercise of power and authority conferred upon and vested in it as such trustee (and said trustee hereby warrants that it possesses full power and authority to execute this instrument). It is expressly understood and agreed by every person, firm or corporation hereafter claiming any interest under this declaration that said trustee as aforesaid, an not personally has joined in the execution of this declaration for the sole purpose of subjecting the title holding interest and trust estate under said Trust No. 10-1912 to the terms of this declaration; and any and all obligations, duties, covenants and agreements of every nature herein set forth by said trustee, as aforesaid to be kept or performed are intended to be kept, performed and discharged by the beneficiaries under said trust or their successor, and not by said trustee personally, and further, that no duty shall rest upon Lakeside Bank, either personally or as such trustee, to sequester trust assets, rentals, avails, or proceeds of any kind, or otherwise to see to the fulfillment or discharge of any obligation, express or implied arising under the terms of this declaration, including where said trustee is acting pursuant to direction as provided by the terms of said trust, and after the trustee has first been supplied with funds required for the purpose. In the event of conflict between the terms of this paragraph and of the remainder of the declaration on any question of apparent liability or obligation resting upon said trustee, the exculpatory provisions hereof shall be controlling.

IN WITNESS WHEREFORE, the said Lakeside Bank, as trustee aforesaid and not individually has caused its corporate seal to be affixed hereunto and caused its name to be signed in these presents by its Trust Officer and attested by its Assistance Trust Officer this 20th day of April, 2000.

LAKESIDE BANK, AS TRUSTEE, UNDER TRUST  
AGREEMENT DATED 11/20/98 AND KNOWN  
AS TRUST NO. 10-1912

BY: Vincent J. Pollock

Trust Officer

VICE PRESIDENT & TRUST OFFICER

ATTESTED:

SEE RIDER ATTACHED HERETO  
AND MADE A PART HEREOF.

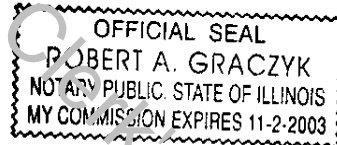
D. V. Robert  
Assistance Trust Officer

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF C O O K )

I, the undersigned, a Notary Public in and for the said County, in the State aforesaid, do hereby certify that VINCENT TOLVE, Trust Officer of Lakeside Bank and DAVID PINKERTON Assisstant Trust Officer of said Bank, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as Trust Officer and Assistance Trust Officer, respectively appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said bank as \*\*trustee as aforesaid, for the uses and purposes therein set forth; and the Trust Officer then and there acknowledged that she/he as custodian of the corporate seal of said bank, did affix the corporate seal of said bank to said instrument as his/her own free and voluntary act and as the free and voluntary act of said bank as trustee as aforesaid, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 20 day of April, 2000.

Robert A. Graczyk  
NOTARY PUBLIC



**EXHIBIT A**

**PARKING SPACES LEGAL DESCRIPTION**

Data is unavailable. Declarant reserves the right to amend Declaration set forth in paragraph 4.19 when the data is available.

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# UNOFFICIAL COPY



Lakeside Bank

00287883

55 WEST WACKER DRIVE • CHICAGO, ILLINOIS 60601-1699 • (312) 435-5100

## GENERAL RIDER

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreements herein made on the part of **LAKESIDE BANK**, Trustee, while in form purporting to be the representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal representations, covenants, undertakings and agreements by the **LAKESIDE BANK**, Trustee, or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said **LAKESIDE BANK**, Trustee, not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the **LAKESIDE BANK**, either individually or in its capacity as Trustee or any of the beneficiaries under said Trust Agreement, on account of this instrument or on account of any representation, covenant, undertaking or agreement of the said **LAKESIDE BANK**, Trustee, in this instrument contained either expressed or implied, all such personal liability, if any, being expressly waived and released.