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September 9, 2011

Board of Directors
One Park Place Tower Condominium Association
c/o Curry Association Management
2700 Kendallwood Parkway, Suite 106
Kansas City, MO 64119

Re: Easement Agreement for Level B of the Annex Parking Garage

Dear Directors:

At the request of the Board of Directors of One Park Place Tower Condominium Association (the "**Association**"), we have reviewed, as legal counsel for the Association, the question of whether Level B (or any portion) of the parking garage structure on Lot 2 (a) is or is required to be platted as a "Common Element" of "Limited Common Element" of the Tower condominium project (i.e. commonly owned by the Tower unit owners with undivided interests similar to their common ownership of the Tower) or (b) is or may become just an easement area for use by the Association and the Tower unit owners pursuant to a written easement agreement (i.e. ownership is held by a third party). In addition, we have reviewed the question as to whether the Board of Directors of the Association has the authority to approve the proposed easement agreement or whether it must be approved by the members (unit owners) of the Association.

In this regard, we have reviewed only the following (collectively, the "**Condominium Instruments**"):

1. The recorded Final Plat of One Park Place (which established Lots 1, 2 and 3) ("**Project Plat**").
2. The recorded Final Plat of One Park Place Tower Condominium ("**Condo Plat**").
3. One Park Place Tower Condominium Amended and Restated Original Sales Certificate dated December 20, 2006 ("**2006 OSC**"). Since I was not provided with the Exhibit B to the 2006 OSC, I have assumed that such Exhibit B consisted of unrecorded copies of the Project Plat and the Condo Plat that were recorded in early 2007.
4. The recorded Declaration of Condominium for One Park Place Tower Condominium and First Amendment, Second Amendment and Third Amendment thereto (the "**Declaration**").

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5. Amended and Restated Bylaws of the Association (the “Bylaws”).
6. Uniform Condominium Act of Missouri (the “Act”).
7. August 11, 2011 draft of Access, Storage Units and Parking Easement Agreement (“Easement Agreement”).

Based solely on our review of the Condominium Instruments, we have the following observations:

1. The Tower condominium project is located only on Lot 1 of the Project Plat. The real property that is part of the Tower condominium project and subject to the Declaration consists solely of Lot 1 and the improvements thereon. The separate 4-level parking garage is on Lot 2 of the Project Plat and is not part of the platted Tower condominium project.

2. The Condo Plat does not show any “Common Elements” or “Limited Common Elements” as being on Lot 2 of the Project Plat. The “Basement” floor of the Condo Plat does show that there is a tunnel heading toward Lot 2. The portion of such tunnel that is located on Lot 1 is a “Common Element” of the Tower condominium project.

3. Section 1 of the 2006 OSC states that the second level of the four level parking garage on Lot 2 will provide parking through an easement for the Tower condo owners and visitors of the condo owners and that there will be dedicated access to such second level. It also states that the Tower condo project will include a portion of the second level of the parking structure within an area to be platted as Lot 1 (meaning the tunnel to the extent on Lot 1). These provisions do not mean that all of the second level of the parking structure (“Level B”) (which is on Lot 2) was to be platted as part of the Tower condo project. Instead, these provisions mean that the Tower condo project will have an easement to have access to and parking on Level B.

4. Section 3.2 of the 2006 OSC states that there will be dedicated access to Level B. Presumably, this refers to the tunnel from the Tower to Level B and the drive entry into Level B. These provisions do not mean that the dedicated access or Level B will be platted as part of the Tower condo project.

5. Section 6 of the 2006 OSC contemplates that the assessments for the Tower condo owners will include funds needed to pay maintenance costs associated with easements.

6. Section 4.03 of the Declaration states that the Tower unit owners will have a right to access the parking garage identified on the plat through an “Access Easement” granted by a recorded document. The Condo Plat does not specifically show the separate parking garage on Lot 2, but such failure does not mean that an “Access Easement” cannot be entered into by the

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Association for use of the parking garage on Lot 2 by the Association and the Tower condo owners. The proposed Easement Agreement will serve as that recorded document once it is signed and recorded.

7. Sections 4.05 and 5.09(c) of the Declaration (added by the Third Amendment) contemplate that there may be an easement agreement with the Declarant (who is the owner of Lot 2) relating to the parking garage on Lot 2. The proposed Easement Agreement will serve as that easement agreement.

8. Section 1.09 of the Declaration defines "Common Elements" to include the entire Lot 1 area and improvements thereon (excluding the units) (which are the traditional "Common Elements" as defined in the Act and platted as part of the Condo Plat). The definition also goes on to include "all rights in any Easement that are granted by or with this Declaration for the benefit of all Units." The quoted clause regarding easement rights is an unusual provision since "Common Elements" traditionally are meant to refer only to areas shown as being within the boundaries of the Condo Plat and, thus, owned by the condo unit owners with undivided interests (as provided in the Act). Easement areas that are located outside the area within the Condo Plat are not "Common Elements" as defined in the Act and, thus, the Act does not stipulate that easement areas are areas to be owned by the condo unit owners with undivided interests. The existence of this "easement rights" clause within the definition of Common Elements contained in the Declaration does not require, under either the Act or the Declaration, that (i) the Easement Agreement be approved by a vote of the members of the Association or (ii) that such member vote (if required) must be unanimous.

9. Section 1.19 of the Declaration defines "Limited Common Elements" as those "Common Elements reserved for the exclusive use of one or more but fewer than all of the Units, and allocated by designation on the [Condo] Plat in this Declaration, or by the provisions of the Act, as further described in Section 2.11." Section 2.11(d) of the Declaration states that all parking spaces and storage spaces which serve any specific Unit shall be Limited Common Elements. As stated in Paragraph 8 above, the "Common Elements" (as defined in the Declaration) include easements/easement areas. Thus, the Declaration contemplates that a "Limited Common Element" (as defined in the Declaration) (here being the parking spaces and storage spaces on Level B of Lot 2) may be in an easement area.

10. Section 448.2-108 of the Act states that the Declaration shall specify to which unit or units each limited common element (as defined in the Act) is allocated and that such allocation cannot be altered without the consent of the unit owners whose units are affected. The definitions of "common elements" and "limited common elements" in Section 448.1-103 of the Act apply only to areas within the boundaries of the Condo Plat (not to easement areas outside of

the Condo Plat). Thus, the Declaration is not required to specify the allocation among the Tower condo units of parking spaces and storage lockers in Level B on Lot 2.

11. Section 5.04(l) of the Declaration gives the Board of Directors of the Association the power and authority to cause the Association to acquire in its own name any right, title and interest in real property. This would include the acquisition of an easement to use the parking garage on Lot 2 owned by another party.

12. In order for Level B of the annex garage to be capable of being separately owned by a party other than the owner of the remainder of the garage, Lot 2 would first have to be replatted as a separate condominium project with a separate condominium declaration.

13. Whether Level B is owned by the Tower condo project (or its unit owners) or just an easement area in favor of the Tower condo project, the Association will have expenses associated with the use and maintenance of Level B and will have concerns regarding the uses and maintenance of the remainder of the garage.

14. Section 17.03 of the Declaration (comparable to Section 448.2-117.4 of the Act) requires unanimous approval of the Tower unit owners to amend the Declaration to effect certain changes. None of the specified changes apply to this situation. No "Development Rights" are being created or increased. There is no increase in the number of "Units" or change in the boundary of any "Unit". There is no change in the "Common Element Interests" (which are the percentages assigned to each Unit). There is no change in the uses to which any Unit is restricted.

15. If Lot 2 and the annex garage are subject to a deed of trust lien that is recorded prior to the recording of the Easement Agreement, the lender would have the right to extinguish the easement pursuant to a foreclosure of the deed of trust lien. To prevent this extinguishment possibility, the Easement Agreement provides for the current deed of trust holder to "subordinate" its lien to the provisions of the Easement Agreement. A deed of trust lien recorded after the recording of the Easement Agreement would not have any rights to extinguish the Easement Agreement in a foreclosure.

16. If the owner of Lot 2 were to become the subject of a bankruptcy proceeding, the Easement Agreement and the easements created in favor of the Tower would be voidable by the bankruptcy estate under only a few sets of circumstances, none of which appear to be present here.

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Conclusion

Based upon the foregoing review and observations, our opinion is that Level B of the annex garage was not intended to become (nor is it required to become) part of the platted "Common Elements" or platted "Limited Common Elements" of the Tower condo project (and, thus, commonly owned by the Tower unit owners with undivided interests). In other words, our opinion is that there is no requirement that any part of Level B on Lot 2 be part of the real property within the boundaries of the Condo Plat. Instead, our opinion is that the Association and Tower unit owners were intended to have (and lawfully may have) an easement to use and enjoy Level B pursuant to a written easement agreement to be entered into between the Association and the owner of Lot 2.

Based upon the foregoing review and observations, our opinion is that the Board of Directors of the Association has the right to approve the proposed Easement Agreement and that there is no requirement that the members (unit owners) approve the Easement Agreement.

Today, no easement has been granted in writing by the owner of Lot 2 for the use of the annex garage by the Tower condo project. The 2006 OSC and the Declaration contemplate that there will be a written easement. Arguably, the owner of Lot 2 could unilaterally execute and record an easement document without ever discussing or negotiating the terms and conditions of the easement with the Association. Instead, the owner of Lot 2 has negotiated the proposed Easement Agreement with the Board of Directors of the Association (which has had input from the members of the Association). This Easement Agreement will create and reduce to a recorded written instrument all of the specifics of the easement rights of the Association and Tower condo owners and all of the other rights and obligations of both sides with respect to the easement areas (being Level B, the stairways and the portion of the tunnel and entry/exit drives on Lot 2) and other matters of joint interest to both sides relating to the annex garage and the use and maintenance thereof. Given the complexities of the multi-level, multi-user annex garage, a negotiated Easement Agreement is better for the parties than a unilaterally imposed easement or the possibility of a protracted and expensive litigation over undefined aspects of any easement that may be implied by law.

We are licensed to practice law in the State of Missouri. The opinions set forth above are specifically qualified by reference to, and are based upon, the laws of the State of Missouri.

Very truly yours,

Polsinelli Shughart, P.C.

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