

Record and return to:

Jeffrie L. Hollingworth  
68 S. Main St., 6<sup>th</sup> Floor  
Salt Lake City, UT 84101

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
CENTER POINT BUSINESS PARK,  
A COMMERCIAL PLANNED UNIT DEVELOPMENT**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF CENTER POINT BUSINESS PARK, A COMMERCIAL PLANNED UNIT DEVELOPMENT ("Declaration"), is made and executed this 7<sup>th</sup> day of FEBRUARY, 2005 by Center Point Business Park, L.C., a Utah limited liability company (the "Declarant").

RECITALS

- A. Capitalized terms used in this Declaration are defined in Article I.
- B. Declarant holds legal title to that certain tract of real property located in Salt Lake County, more particularly described in Article I of this Declaration.
- C. By this Declaration, Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Property and the interests therein conveyed and establish thereon a commercial planned unit development in accordance with the terms of this Declaration.

NOW, THEREFORE, it is hereby declared that the Property shall be held, sold, conveyed, leased, rented, encumbered and used, subject to the following Declaration and its covenants, restrictions, limitations, and conditions, all of which shall constitute covenants which run with the land and shall be binding on and be for the benefit of the Declarant, its successors and assigns and all owners of all or any part of the Property, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, all as set forth herein.

ARTICLE I  
Definitions

1. When used in this Declaration (including in that portion hereof entitled "Recitals") the following terms shall have the meaning indicated.

- (a) "Association" shall mean and refer to Center Point Business Park Owners Association, Inc., a Utah non-profit corporation.
- (b) "Board of Directors" shall mean the board of directors of the Association.
- (c) "Center Driveway" shall mean the driveway, adjoining parking stalls and related improvements that run south to north through the center of the Property and between Lots 7, 8 and 9, all as shown on the Plat.
- (d) "Commercial Unit" shall mean and refer to a structure or portion of a structure which is designed and intended for use and occupancy as a business, together with all improvements located on the Lot concerned which are used in conjunction with such business.

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- (e) **“Common Areas”** shall mean and refer to that part of the Property which is not included within the Lots, including all entryways, roadways, parking areas, flood control detention pond areas and other improvements other than utility lines now or hereafter constructed or located thereon.
- (f) **“Declaration”** shall mean and refer to this Declaration of Covenants, Conditions and Restrictions of Center Point Business Park, a Commercial Planned Unit Development.
- (g) **“Lot”** shall mean and refer to any of the ten (10) separately numbered and individually described parcels of land shown on the Plat.
- (h) **“Member”** shall mean and refer to every person who holds membership in the Association.
- (i) **“Owner”** shall mean the person or persons, including the Declarant, owning fee simple to a Lot within the Property as such ownership is shown by the records of the County Recorder of Salt Lake County, State of Utah. The term “Owner” shall not refer to any mortgagee (unless such mortgagee has obtained title in fee simple to a Lot pursuant to a judicial or non-judicial action including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure), or to any person or persons purchasing a Lot under a contract (until such contract is fully performed and legal title conveyed of record).
- (j) **“Plat”** shall mean and refer to the subdivision plat entitled Center Point Business Park Plat “A” – Amended and filed for record in the office of the county recorder of Salt Lake County, Utah and all amendments thereto.
- (k) **“Property”** shall mean and refer to the entire tract of real property covered by the Plat more particularly described as follows:

Beginning at a point on the Quarter Section line, said point being North 89°28'05" East 509.77 feet from the Center of Section 11, Township 4 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 89°28'05" West 412.85 feet (South 89°52'46" West 413.7 feet record) along said quarter section line; thence North 986.62 feet (North 974 feet record) to the southerly line of a railroad right-of-way; thence North 28°21'44" East 883.99 feet (North 28°46'20" East 898.66 feet) along the southerly line of said railroad right-of-way; thence South 0°13'52" West 1760.68 feet (South 0°38'34" West 1760.96 feet record) to the point of beginning.

Contains 570,572 sq. feet 13.10 acres.

- (l) **“Ring Road”** shall mean the roadway that runs throughout the outer perimeter of the Property, serving as ingress and egress for all passage throughout the project.

ARTICLE II  
Membership and Voting Rights

1. Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and may not be separated from the Lot to which it appertains.

2. Voting Rights. The Association shall have the following described two classes of voting membership:

- (a) Class A Members. **“Class A”** members shall be all Owners, except the Declarant until the Class B Membership ceases. Class A members shall be entitled to one (1) vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one (1) Class A membership vote exist with respect to any Lot. When this Declaration provides for voting by Class, Declarant shall not be entitled to vote shares in Class A until the conversion of its Class B shares to Class A as provided below.
- (b) Class B Members. The **“Class B”** member shall be the Declarant. The Class B member shall be entitled to four (4) votes for each Lot in which it holds the interest required for membership in the Association. The Class B membership shall automatically cease and be converted to Class A membership, on the basis of one vote for each Lot in which the interest required for membership in the Association is held, on the first to occur of the following events:
- (i) When the total number of votes held by all Class A members equals or exceeds the total number of votes held by the Class B member; or
- (ii) The expiration of seven (7) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

3. Multiple Ownership Interests. In the event there is more than one (1) Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

ARTICLE III  
Property Rights in Common Areas

1. Easement of Enjoyment. Each Member shall have an individual interest, right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be

appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Absent specific written notice to the contrary, each Member is deemed to have delegated the right and easement of use and enjoyment described herein to all invitees, guests, tenants, lessees and persons conducting business on a Member's Lot.

2. Form and Conveyance. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

"Lot No. \_\_\_\_\_ contained within Center Point Business Park, a Commercial Planned Unit Development, as the same is identified in the Plat recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ and in the Declaration of Covenants, Conditions, and Restrictions of Center Point Business Park, a Commercial Planned Unit Development, recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_. TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described and as provided for in said Declaration of Covenants, Conditions, and Restrictions."

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

3. Transfer of Title. As soon as is reasonably practicable following the closing of the Declarant's sale of Lot 2, Declarant shall convey to the Association title to the Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities).

4. Limitation on Easement. A Member's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

- (a) The right of the Association to suspend a Member's right to the use of any facilities included in the Common Areas (i) for any period during which an assessment on such Member's Lot remains unpaid for a period exceeding ninety (90) days; and (ii) for any infraction by such Member of the provisions of this Declaration or of any rule or regulation promulgated by the Association;
- (b) The right of the Association to impose reasonable limitations on the number of guests, invitees and employees per Member who at any given time are permitted to use the Common Areas; and the Right of the Association to reasonably allocate and/or assign specific parking spaces to each Owner, taking into account the proximity of the assigned spaces to the lots of each Owner. An Owner may construct additional parking facilities not part of the Common Area for its own exclusive use within the boundaries of that Owner's Lot or Lots subject to the Association's approval, not to be unreasonably withheld;
- (c) The right of Salt Lake County and any other governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the

Property for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service; and

- (d) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the vote of each class of membership which Members present in person or by proxy are entitled to cast at a meeting duly called for the purpose. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

#### ARTICLE IV Assessments

1. Personal Obligation and Lien. By acquiring or in any way becoming vested with an interest in a Lot, each Owner covenants and agrees to pay to the Association the monthly and the special assessments described in this Article, together with, if applicable, interest and costs of collection. Furthermore, all such amounts shall be, constitute, and remain; (i) a charge and continuing lien upon the Lot with respect to which such assessment is made; and (ii) the personal obligation of the person who is the Owner of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot.

2. Purpose of Assessments. Assessments levied by the Association shall be used for maintaining the Property as a commercial business complex and promoting the recreation, health, safety and welfare of the Owners of the Property their guests, invitees and customers, which purposes include payment of the following: taxes and insurance on the Common Areas; maintenance, repair, and improvement of the Common Areas; management and supervision of the Common Areas; any required utility service to the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Articles of Incorporation. Declarant has incurred and will incur certain expenses for development of the Property ("Declarant's Development Expense"), including engineering, preparation of the covenants, conditions and restrictions, preparation of the subdivision plat, obtaining the approval of the City to the recording of the plat and revisions to the plat, installation of utilities, construction of the ring road and center driveway, grading the site, filing and prosecuting applications with the City for approvals needed for the development of the Property, and any other similar or related expense. Declarant also has and will have ongoing expense ("Declarant's Ongoing Expense") for maintenance, operation and marketing of those portions of the Property that it owns not including the Common Areas. Neither the Declarant's Development Expense nor the Developer's Ongoing Expense may be made the subject of an assessment or special assessment. Declarant may however obtain reimbursement for these expenses from purchasers of Lots at the time of their respective Lot purchase.

3. Maximum Monthly Assessment. For the first year beginning on the Assessment Commencement Date, each Lot shall be subject to a monthly assessment of not more than Two Cents (\$0.02) per square foot of Lot space. Thereafter, the maximum monthly assessment may be increased or decreased so long as the change is assented to by a majority of the votes of each class of

membership which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. The Board of Directors of the Association may from time to time, and in its discretion, set the amount of the monthly assessment at any sum not in excess of the then applicable maximum amount.

4. Special Assessments. From and after the Assessment Commencement Date, the Association may levy special assessments for the purpose of defraying, in whole or in part: (i) any reasonably necessary expense or expenses not capable of being fully paid with funds generated by monthly assessments; or (ii) the reasonable cost of any construction, reconstruction, or unexpectedly required repair or replacement of an improvement or of personal property upon the Common Areas. Any such special assessment must be assented to by a majority of the votes of each class of membership which Members present in person or represented by proxy are entitled to cast at a meeting duly called for the purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

5. Quorum Requirements. The quorum required for any action authorized by Sections 3 or 4 above shall be as follows:

- (a) At the first meeting called the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum.
- (b) If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Sections 3 and 4 above) at which a quorum shall be one-half ( $\frac{1}{2}$ ) of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

6. Rate of Assessments. Both monthly and special assessments shall be apportioned among and assessed to all Owners of Lots in accordance with the relative square footage of the Lots.

7. Monthly Assessment Due Dates. The monthly assessments provided for herein shall commence (the "Assessment Commencement Date") as to all Lots on the first day of the second month following conveyance of the Common Areas to the Association, which shall occur as soon as reasonably practicable following the closing of the Declarant's sale of Lot 2. At least fifteen (15) days prior to the Assessment Commencement Date and at least fifteen (15) days prior to the effective date of any change in amount of the monthly assessment, the Association shall give each Owner written notice of the amount and first due date of the assessment concerned.

8. Certificate Regarding Payment. Upon the request of any Owner, any prospective purchaser, or any lien holder of a Lot, the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon. As of the date of adoption of this instrument, no capital improvements or assessments are anticipated or deferred that would be passed on to the Association. Certain deferred maintenance issues such as landscaping the east wall will be done at Developer expense.

9. Effect of Non-payment - Remedies. Any assessment not paid within 15 days of written notice that it is overdue shall, together with interest from the date due at the rate of fifteen percent (15%) per annum and costs of collection, be, constitute, and remain a continuing lien on the Lot, and the Owner of the Lot at the time the assessment falls due shall also be and remain personally liable for payment, which personal liability shall not pass to such Owner's successors in title unless expressly assumed by such successors. To evidence a lien for the sums assessed pursuant to this Article, the Board of Directors of the Association may prepare a written Notice of Lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot and a description of the Lot. Such Notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the Office of the County Recorder of Salt Lake County, State of Utah. No Notice of Lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or judicial foreclosure of deeds of trust or mortgages or in any other manner permitted by law. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), interest at the rate of fifteen percent (15%) per annum, and such costs and expenses shall be secured by the lien being foreclosed.

## ARTICLE V Operation and Maintenance

1. Maintenance of Lots and Commercial Units. Each Lot and Commercial Unit shall be maintained by the Owner thereof in safe and clean condition, in good order and repair, and so as not to detract from the appearance of the Property and so as not to adversely affect the value or use of any other Commercial Unit. The Association shall have no obligation regarding maintenance or care of any Commercial Units or any portion of a Lot which lies between the extremities of the Commercial Unit situated thereon and the boundaries of the Lot.

2. Operation and Maintenance by Association. The Association shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately useable in conjunction with the Lots and to keep them clean, functional, attractive, and generally in good condition and repair. The Association shall not provide for maintenance and upkeep of any portion of a Lot which lies between the extremities of the Commercial Unit situated thereon and the boundaries of the Lot.

3. Utilities. Each Owner shall be responsible for the installation, maintenance and repair of all utilities to such Owner's Lot.

4. Taxes. Each Owner shall pay, or cause to be paid, directly to the tax assessor, prior to delinquency, all real property taxes and other special taxes and assessments which may be levied or assessed against the Lot owned by said Owner, including the portion of the Common Area within such Owner's Lot, and including any assessment attributable to appurtenant interests created by this Declaration, subject to the right of any party to contest such taxes and assessments in the manner provided by law.

5. Insurance for Common Area. The Association shall secure and at all times maintain the minimum following insurance coverage:

- (a) A policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable current replacement cost basis of all improvements comprising a part of the Common Areas in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost). The name of the insured under each such policy shall be in form and substance similar to: "Center Point Business Park Owners Association for the use and benefit of the individual Lot Owners and mortgagees, as their interests may appear." Notwithstanding any other provision herein, no hazard insurance proceeds shall be used for losses to any Common Areas for other than the repair, replacement or reconstruction of such common property.
- (b) A policy or policies insuring the Owners, the Association and its directors, officers, agents, and employees against any liability incident to the ownership, use or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall be determined by the Association but in no event shall such limits be less than \$1,000,000.00 for any one person injured, \$2,000,000.00 for all persons injured in any one accident, and \$500,000.00 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced.

The following additional provisions shall apply with respect to insurance:

- (i) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature, and use.
- (ii) All policies shall be written by a company holding a rating of "B+ Class V" or better from Best's Insurance Reports.
- (iii) The Association shall have the authority to adjust losses, not to include, however, the right to compromise any liability owed to a Member without the consent of that Member.
- (iv) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual owners or the mortgagees.
- (v) Each policy of insurance obtained by the Association shall, if reasonably possible, contain the following provisions:
  - (1) A waiver of the insurer's subrogation rights with respect to the Association, the Owners, and their respective directors, officers, agents, employees, invitees, and tenants.
  - (2) Such policy cannot be canceled, suspended, or invalidated due to the conduct of any particular Owner or Owners.



- (3) Such policy cannot be canceled, suspended, or invalidated due to the conduct of the Association or of any director, officer, agent, or employee of the Association without a prior written demand that the defect be cured.
- (4) That any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.

6. Liability Insurance. Each Owner shall, at all times, maintain, or cause to be maintained, general public liability insurance against claims for personal injury or death and property damage occasioned by accident occurring upon, in or on the Common Areas within the respective Lot of each Owner, such insurance in each case to afford protection to the limits as determined adequate by each Owner and consented to by the Declarant, or its successors or assigns, which consent shall not be unreasonably withheld. Each Owner, with the consent of the Declarant or its successors or assigns, which consent shall not be unreasonably withheld, may from time to time increase or decrease the amounts of insurance maintained hereunder to reflect any actual and substantial decrease in the value of the dollar or increase in risk occurring after the date of this Declaration.

7. Manager. The Association may carry out through a property manager any of its functions which are properly the subject of delegation. Any manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Property for the benefit of the Association and the Owners, and shall, to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

## ARTICLE VI Use Restrictions

1. Use of Common Areas. The Common Areas shall be used for the following purposes only:
  - (a) Pedestrian and vehicular traffic.
  - (b) The installation, maintenance, and operation of underground separate and/or common and/or public utilities services serving any of the Lots, together with and including vaults, manholes, meters, pipelines, valves, hydrants, sprinkler controls, conduits, and related facilities on site, piping and surface facilities for storm drainage and retention and detention ponds, and related facilities, and sewage facilities, all of which (except hydrants) shall, to the extent reasonably possible, be even with or below the surface of the ground, except for transformers, telephone and television junction boxes and meters which will not be underground.
  - (c) The location of mail boxes, public telephones, newspaper racks, and benches for the comfort and convenience of Owners, visitors, invitees, licensees, as the Declarant or the Association may from time-to-time deem appropriate.

- (d) The construction, maintenance, repair, replacement, rearrangement, and reconstruction of parking sites or stalls, streets, sidewalks, ramps, driveways, lanes, curbs, gutters, traffic control areas, signals, traffic islands, and traffic and parking lighting facilities.
- (e) The construction, maintenance, repair, replacement, and reconstruction of signs (with appropriate underground electrical connections), if otherwise permitted.
- (f) The construction, maintenance, repair, replacement, and reconstruction of any landscaped areas including planters, planting boxes, edgers, decorative walls, and sprinklers and valves.
- (g) The ingress and egress of Owners, visitors, invitees, tenants and licensees (and their vehicles) to and from any public streets adjacent thereto, and the ingress and egress of delivery and service trucks and vehicles to and from the Lots or any portion thereof and to and from any public streets adjacent thereto, for the delivery of goods and materials, and the rendition of services to Owners and their respective heirs, successors, grantees, assigns, and lessees.
- (h) The ingress and egress of any of the persons designated in paragraph (g) above and their vehicles, to and from any portion of any Lot and to and from the public streets adjacent thereto.
- (i) Subject to adequate provision for the uses set forth in the other paragraphs in this Section 5, the rearrangement and reconstruction of loading and unloading areas, and trash, refuse, and garbage container storage areas.
- (j) The temporary parking of trucks, tractors, trailers, and other delivery vehicles used in conjunction with the exercise of any of the activities described in paragraph (g) above.
- (k) Subject to the foregoing limitations and restrictions, during the course of construction of any Commercial Units which may hereafter be constructed upon any of the Lots, those portions of the Common Areas immediately adjacent thereto may be used by the Owner of the Lot, or, with such Owner's written consent, by the tenant thereof, for the temporary storage of construction materials and equipment used and to be used in connection with the construction of the Commercial Unit; provided that such use thereof does not unreasonably interfere with the normal use of such Common Areas.

2. Prohibited Use of Common Areas. The Common Areas shall not at any time be used for the parking of trucks or the loading or unloading thereof, except for the parking, loading or unloading of trucks during and in connection with construction of Commercial Units upon any of the Lots and the servicing and supplying of the Commercial Units; or the construction, repair, or maintenance of parking areas and improvements and facilities herein permitted; upon the condition, however, that any such use shall be confined to the portion of the Common Areas which is reasonably necessary in connection with the matters herein specified and shall be diligently and promptly completed.

3. No Changes in Storm Drainage. Consistent with local construction practice, and subject to applicable local building codes, storm drainage for the Property is intended to be provided and controlled by underground storm drainage, and by surface structure, including grading, paving, curbs, curb cuts, berms, detention ponds and other surface improvements and controls. For this purpose, following the completion of the construction of parking lots, curbs, gutters, detention pond, and other structures on the Common Areas, the surface grade and the location and drainage functions of such structures on the Common Areas shall not be changed or altered without the prior written consent of the Declarant and all Owners, which consent shall not be unreasonably withheld if such changes or alterations do not materially adversely impact upon or affect the function or maintenance of the storm drainage system for the Property or any Lot.

4. Commercial Unit Design and Construction. Each Commercial Unit or other improvement (including signs) to be constructed, altered, remodeled, repaired, or reconstructed on the Property shall be compatible in quality of construction and design with the other Commercial Units and improvements from time-to-time located on the Property. All construction of Commercial Units and modifications to the exterior of existing Commercial Units constructed on the Property shall be subject to the prior written approval of the Declarant and the Association, which approvals shall not be unreasonably withheld. No modifications to the elevation and exterior appearances for Commercial Units on the Property shall take place prior to such approval. All construction, alteration, maintenance and repair work relative to a Commercial Unit shall be accomplished in a diligent and reasonably expeditious manner, in compliance with all laws, rules, regulations, orders, permits, approvals, and licenses of governmental authorities having jurisdiction. Each Owner shall, at such Owner's sole cost and expense, be responsible for obtaining all zoning approvals, conditional use approvals, building permits and/or approvals that may be required for the construction, maintenance and operation of a Commercial Unit on such Owner's Lot. The Owner undertaking such work shall take all necessary measures to minimize any disruption or inconvenience caused by such work. Such work shall be accomplished in such a manner as to minimize any damage or adverse effect which might be caused by such work to any other party or to the Lot on which the work is being done or any other Lot on the Property. The Owner undertaking such work shall repair at its own cost and expense any and all damage caused by such work and shall restore the affected portion of the Lot upon which such work is performed to a condition which is equal to or better than the condition which existed prior to the beginning of such work. In addition, the Owner undertaking such work shall promptly pay all costs and expenses associated therewith and shall indemnify and hold all Owners harmless from all damages, losses, or claims, including reasonable attorneys' fees, attributable to the performance of such work. Except in cases of emergency or the prior consent of the Declarant and all Owners, all such work shall be undertaken only after giving the Declarant and Owners thirty (30) days' prior written notice of the work to be undertaken, the scope and nature of the work, the duration of the work, and the area in which the work is to be performed.

5. Commercial Unit Height. In no event shall any Commercial Unit on the Property be of a height in excess of twenty-six feet (26') (measured from finished floor to the mid-point of sloping roofs).

6. Prohibited Activities. Unless consented to in writing by the Association, in its sole and absolute discretion, no Lot or Commercial Unit may be used for:

- (i) unless fully contained within a Commercial Unit, the storage, sales or repair of motor vehicles;

- (ii) a movie theater, restaurant or retail business;
- (iii) a video or pinball arcade;
- (iv) the storage, sale, distribution, rental or viewing of sexually explicit materials or sexually explicit performances;
- (v) the sale of paraphernalia related to illegal drugs;
- (vi) escort services;
- (vii) any business establishment utilizing an outdoor speaker that produces in excess of 40 DBA's as can be heard by a person occupying the Units or any business establishment utilizing an outdoor speaker during the hours of midnight to 8:00 a.m. on weekdays and 1:00 a.m. on weekends;
- (viii) the storage or sale of petroleum products or other hazardous materials (as defined by state and federal law) which could reasonably be expected to cause an increase in insurance rates for the Property or any individual Commercial Unit;
- (ix) any business establishment creating noxious or harmful odors; or
- (x) any business which utilizes more than 1.5 on-site individuals per 1000 square feet of Lot space on a regular basis. (To "utilize" means to employ or to have the participation of volunteers who if they were paid would be employed, or to have contractors who are not technically employed but who work on site.) Patrons, customers and invitees of businesses are not considered as part of the quota of persons utilized under this paragraph.

7. Automatic Sprinklers. Every Commercial Unit shall be either equipped with automatic sprinkler systems which meet all the standards of the local organization or authority having jurisdiction, or shall be constructed in such a manner as not to adversely affect the fire rating of any Commercial Unit built on the Property. The purpose of this paragraph is to allow Commercial Units built on each Lot to be fire-rated as separate and distinct units without deficiency charge.

8. Location of Commercial Units. Subject to the restrictions set forth in this Declaration, all Commercial Units shall be placed or constructed upon the respective Lot on the Property as herein defined. No Commercial Units shall be placed or constructed within the Common Areas, except for railroad sidings, signs, bumper guards or curbs, landscape planters, lighting standards, and other landscaping or other improvements as may be required under applicable municipal controls and regulations. The building area of each Lot may, but need not be developed to the full extent permitted on the site plan; provided, however, except as provided in the preceding sentence, no Commercial Unit located on any Lot may be extended beyond the boundaries of the building area as shown on the site plan.

9. Maintenance of Commercial Units. The Owner of each Lot shall maintain, or cause to be maintained, in a safe and clean condition, and in good order and repair, all Commercial Units located on its respective Lot.

10. Pets. No animals or pets shall be kept or allowed on any Lot [or within any part of the Common Areas], unless such animal or pet is kept within the Commercial Unit at all times. Whenever a pet is allowed to leave a Commercial Unit it shall be either on a leash or in a cage.

11. Rules and Regulations. The Association shall have authority to promulgate and enforce such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions hereunder or to insure that the Property is maintained and used in a manner consistent with the commercial business interests of the Owners.

12. Exception for Declarant. Notwithstanding the restrictions contained in this Article VI, section 4, for the seven (7) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, or until all of the Lots have been sold, whichever is earlier, Declarant shall have the right to use any Lot or Commercial Unit owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of and strictly limited to any construction, marketing, sales, management, promotional, or other activities reasonably designed to accomplish or facilitate improvement of the Common Areas or improvement and/or sale of all Lots owned by Declarant. Declarant shall conform to all of the sections of this article except section 4, however, and with regard to structures built for permanent operation and occupancy upon a Lot or Commercial Unit, shall comply with section 4.

## ARTICLE VII Architectural Committee

1. Architectural Control Committee. The Board of Directors of the Association shall appoint a three (3) member Architectural and Landscape Control Committee (the “**Architectural Control Committee**”) the function of which shall be to insure that all improvements and landscaping within the Property are visually attractive and harmonious with the existing surroundings and structures. The Architectural Control Committee need not be composed of Owners. If such an Architectural Control Committee is not appointed the Board of Directors, the Board of Directors shall perform the duties of the Architectural Control Committee.

2. Submission to Committee. No Commercial Unit, accessory or addition to a Commercial Unit which is visible from the Common Areas, or other improvement of a Lot which is visible from the Common Areas shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Commercial Unit shall be performed, unless and until complete plans and specifications therefor have first been submitted to and approved by the Architectural Control Committee.

3. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the Architectural Control Committee shall use its best judgment and shall act reasonably to insure that all improvements, construction, landscaping, and alterations on Lots within the Property conform to and harmonize with existing surroundings and structures and that each Owner has a reasonable opportunity to use and adapt its Lot for its commercial objectives. For all Lots excepting Lots 9 and 10, the standard that shall be applied to such construction, alteration, remodeling, repair or reconstruction shall be reasonably based on existing building elevations, exteriors, color

schemes, and materials. With respect to Lots 9 and 10 which differ from the other Lots in size and shape, the standard set forth in the preceding sentence shall not apply and improvements, construction, landscaping and alterations on Lots 9 and 10, i.e., self storage units, which differ substantially from the other Lots may be approved by the Architectural Control Committee, provided the Architectural Control Committee uses its best judgment and acts reasonably in granting such approval.

4. Approval Procedure. The Architectural Control Committee shall reasonably approve or disapprove any plans and specifications submitted to it in writing within forty-five (45) days after submission. In the event the Architectural Control Committee fails to take any action within such period it shall be deemed to have approved the material submitted. Any decision made by the Architectural Control Committee shall be accompanied with a statement of reasons for the outcome, which may be supplied within fifteen (15) days after the announcement of the decision. An appeal may be taken from the Architectural Control Committee to the Board of Directors of the Owners' Association, which may by majority vote overturn a decision of the Architectural Control Committee.

5. Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the Architectural Control Committee shall be diligently prosecuted to completion. If reasonably necessary to enable such improvement, construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy unimproved portions of the Common Areas and of the Lots in the vicinity of the activity.

6. No Liability for Damages. The Architectural Control Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article VII.

7. Exception for Declarant. The foregoing provisions of this Article VII shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any Lot or on any part of the Common Areas and which occurs at any time during the seven (7) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah. Although Declarant shall enjoy the exception provided by this paragraph, Declarant's improvements, construction, landscaping, or alterations on any Lot (other than Lot 9 or 10) or on any part of the Common Areas shall conform reasonably to the standard provided by Article VII section 3.

## ARTICLE VIII Party Walls

1. General Principles. Each wall constructed as part of the original construction of the Commercial Units which is located on a boundary line common to two Lots shall constitute a party wall. Except as herein modified and expanded, all legal and equitable principles relating to party walls shall govern and apply to such walls.

2. Maintenance. The cost of reasonable maintenance and repair of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. Costs associated with maintenance or repairs benefiting only one Owner (such as interior painting or redecorating) shall be borne solely by the Owner so benefited.

3. Destruction. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall or who will use the restored wall may restore it. Any Owner thereafter making use of the wall shall contribute to the cost of restoration in proportion to such use; provided, however, that the foregoing portion of this sentence shall not prejudice or limit any Owner's right to obtain a larger contribution under any legal or equitable principle regarding liability for negligent or willful acts or omissions.

4. Encroachments. If any portion of a Commercial Unit constructed by Declarant, or if any portion of a Commercial Unit reconstructed so as to substantially duplicate the Commercial Unit originally constructed by Declarant, encroaches upon an adjoining Lot or upon the Common Areas, there shall exist an easement for such encroachment. In order to qualify, however, the encroachment must be of minimal size, negligible in size comparable to the overall size of the Lot on which it encroaches and of no substantial inconvenience to the Owner of the Lot encroached upon. Once a Lot has been sold, no new construction on neighboring lots shall encroach on that Lot under this paragraph without the express permission of the Owner of that Lot.

#### ARTICLE IX Development of Center Driveway

1. General. Declarant acknowledges that use of heavy construction equipment (e.g., cranes hoisting "tilt-up" walls) and other construction activities on a Lot during development of a Commercial Unit could result in damage to the adjoining Center Driveway if that portion of the adjoining Center Driveway is installed prior to completion of a Commercial Unit on a Lot. Therefore, Declarant intends that the Center Driveway be constructed in phases in conjunction with the development of a Commercial Unit on a Lot in order to minimize any damage to the Center Driveway resulting from construction activities on a Lot. Notwithstanding the foregoing, any Commercial Unit on a Lot shall not be occupied or otherwise utilized unless and until the adjoining portion of the Center Driveway has been constructed in full compliance with this Article IX.

Except for Temporary surfacing, all construction and improvements relating to the Center Driveway shall be of the same type and quality of materials and design such that the Center Driveway, when complete, shall be smooth, even and uniform and substantially similar to that portion of the Center Driveway which has been constructed between Lot 1 and Lot 2. The Declarant and/or Association shall have the ability to interpret, monitor and enforce the provisions of this Article IX.

2. Owner Obligations – Lots 1 through 8. Each Owner of Lots 1 through 8 shall be responsible for constructing that portion of the Center Driveway that adjoins such Owner's Lot runs to the center line of the Center Driveway. Declarant acknowledges that as of the date of this Declaration, the portion of the Center Driveway between Lots 1 and 2 has been completed. Construction of that portion of the Center Driveway between Lots 3, 4, 5, 6, 7 and 8 shall proceed as follows:

- (a) Subsurface Improvements. When an Owner commences development of a Commercial Unit on its Lot (the "**Constructing Owner**"), such Owner shall complete all grading, filling, compaction and other subsurface work for the entire portion of the Center Driveway between the Constructing Owner's Lot and the opposite Lot (the "**Subsurface Work**"). The costs of the Subsurface Work shall be shared equally between the Constructing Owner and the Owner of the opposite Lot (the "**Non-Constructing Owner**"). The Non-Constructing Owner shall pay the

Constructing Owner for such costs within thirty (30) days of written request, which request shall be accompanied by reasonably detailed information documenting the Subsurface Work costs.

- (b) Surface Improvements. The Constructing Owner shall, at its sole expense, complete all concrete paving, curb, gutter and related improvements for the surface of that portion of the Center Driveway that adjoins the boundary of such Owner's Lot to the center line of the Center Driveway ("**Final Surface Work**"). The Non-Constructing Owner shall have the option, at its sole expense, to either (i) install the Final Surface Work concurrent with the Constructing Owner; or (ii) delay installation of the Final Surface Work and, instead, install temporary asphalt that is smooth and even with the Final Surface Work and otherwise complies with applicable laws, codes and ordinances ("**Temporary Surfacing**"). In the event the Non-Constructing Owner elects to install Temporary Surfacing, the Non-Constructing Owner shall, at its sole cost and expense, be responsible for the removal of the Temporary Surfacing and installation of the Final Surface Improvements prior to occupying or utilizing any Commercial Unit on such Owner's Lot.

3. Owner's Obligations – Lots 9 and 10. Prior to occupying or utilizing any Commercial Unit on Lot 9, the Owner of Lot 9 shall be responsible, at its sole cost and expense, for performing the Subsurface Work and the Final Surface Work for the entire portion of the Center Driveway that adjoins the southerly boundary of Lot 9. The Owner of Lot 10 shall not be required to construct any portion of the Center Driveway or pay any of the construction costs thereof.

4. Center Driveway Construction Not An Assessable Expense. Expense for the initial construction of the Center Driveway, whether Subsurface Work, Final Surface Work, or Temporary Surfacing, or any other work authorized under this Article IX, and including initial installation of utilities, storm drainage features, and all infrastructure, shall not be assessed to Members. Declarant may require purchasers of Lots to perform or pay for such work at the time of their respective Lot purchase on terms and conditions determined by Declarant in its sole discretion.

## ARTICLE X

### Relocation of the Ring Road and the Center Driveway

1. Declarant hereby notifies the Owners that it may be necessary to (i) modify or relocate certain portions of the Ring Road located on Lots 9 and 10; or (ii) modify or relocate certain portions of the Center Driveway that adjoin the southerly boundary of Lot 9. Declarant hereby reserves the right to modify or relocate any part of the Ring road located on Lots 9 or 10 or any portion of the Center Driveway that adjoins the southerly boundary of Lot 9, provided that such modification and/or relocation does not materially and adversely impair the access, ingress and egress rights of the Lot Owners. During the construction of such modification and/or relocation, access to all Lots may be temporarily and reasonably closed or restricted, so long as each Lot owner is notified within thirty (30) days of such expected closure, and such closure or restriction is minimized to the extent reasonably practical. Any such closure will be conducted expeditiously and in a manner so as to minimize interference with access to the Lots. The costs of any such relocation or modification shall be the sole responsibility of Declarant or the Owner(s) of Lots 9 or 10 as may be agreed upon in writing.



ARTICLE XI  
Miscellaneous

1. Implied Rights. Declarant may exercise any right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

2. Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if mailed postage prepaid to the person who appears as a Member of Owner, at the latest address for such person appearing, in the records of the Association at the time of mailing.

3. Amendment. Any amendment to this Declaration shall require: (i) the affirmative vote of at least seventy-five percent (75%) of all Class A membership votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose; and, so long as the Class B membership exists, (ii) the written consent of Declarant, which shall not be unreasonably withheld or delayed. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. The quorum required for any such meeting shall be as follows:

- (a) At the first meeting called, the presence of Members or of proxies entitled to cast seventy-five percent (75%) of all the votes of the Class A membership shall constitute a quorum.
- (b) If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirement set forth in the foregoing portion of this Section 3) at which a quorum shall be one-half (½) of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

Any amendment authorized pursuant to this Section 3 shall be accomplished through the recordation of an instrument executed by two (2) officers of the Association and, if the Class B membership then exists, executed by Declarant. In such instrument, an officer or director of the Association shall certify that the vote required by this Section 3 for amendment has occurred.

4. Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the class of membership concerned. The following additional provisions shall govern any application of this Section 4.

- (a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.
- (b) The total number of votes required for authorization or approval under this Section 4 shall be determined as of the date on which the last consent is signed.

- (c) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold consent.

5. Mortgage Protection. In the event an Owner neglects to cure, for a period of thirty (30) or more days, any failure on his part to perform any of his obligations under this Declaration, the Association shall give written notice of such fact to the holder of any first mortgage or trust deed covering such Owner's Lot.

Each holder of a first mortgage or trust deed lien on a Lot who comes into possession of a Lot by virtue of foreclosure of the mortgage, exercise of a power of sale thereunder, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Lot free of any unpaid claims or assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot, except for claims for pro-rata share of such assessments or charges resulting from a pro-rata re-allocation of such assessments or charges to all Lots within the Property, including the mortgaged Lot.

Unless at least two-thirds (2/3) of all holders of first mortgages or trust deeds on the individual Lots have given their prior written approval, neither the Association nor any other party shall be entitled to:

- (a) Alter the provisions of Section 6 of Article IV hereof (pertaining to uniform rate of assessment);
- (b) Partition or subdivide any Lot or the Common Areas or dedicate or transfer (pursuant to Section 4 of Article III hereof) all or any part of the Common Areas; or
- (c) By act or omission seek to abandon or materially alter the arrangement which is established by this Declaration.

6. Declarant's Rights Assignable. The rights of Declarant under this Declaration or any relating to the Property may be assignable.

7. Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof. This Declaration shall be liberally construed to effect all of its purposes.

8. Covenants to Run with Land. This Declaration and all of the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter acquire any interest

in a Lot or in the Common Areas, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot or Commercial Unit shall comply with, and all interests in all Lots or in the Common Areas shall be subject to, the terms of this Declaration and the provision of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

9. Attorneys' Fees. In the event an Owner breaches the terms or covenants of this Declaration, such breaching Owner shall be responsible for all costs and expenses incurred by the Association in enforcing this Declaration, including costs of court, reasonable attorneys' fees and interest thereon at the rate of fifteen percent (15%) per annum.

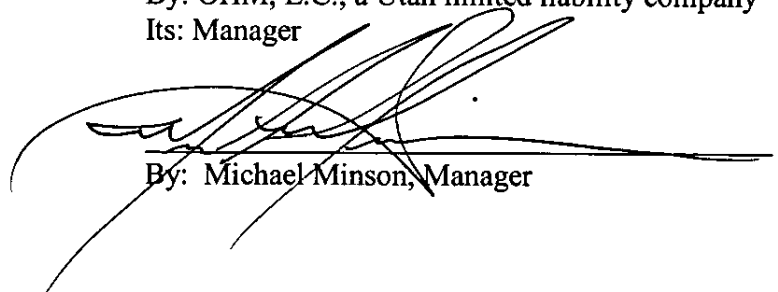
10. Effective Date. This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

EXECUTED the day and year first above written.

[Signature Pages Follow]

CENTER POINT BUSINESS PARK, L.C.  
a Utah limited liability company

By: OHM, L.C., a Utah limited liability company  
Its: Manager

A large, stylized handwritten signature in black ink, appearing to read 'Michael Minson', is written over a horizontal line. The signature is highly cursive and extends significantly above and below the line.

By: Michael Minson, Manager

(See Attached Notary)

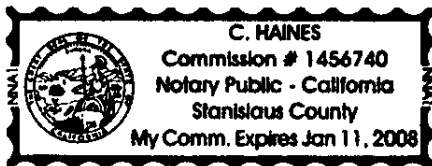
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of Stanislaus } ss.

On Feb. 7, 2005 before me, C. Haines, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared Michael Minson  
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

C. Haines  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Declaration of Covenants, Conditions and Restrictions of Center Point Business Park, a Commercial Planned Unit Development  
Document Date: Feb 7, 2005 Number of Pages: 19 + notary

Signer(s) Other Than Named Above: none

**Capacity(ies) Claimed by Signer**

Signer's Name: Michael Minson

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

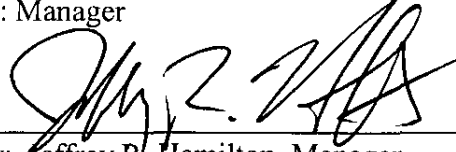
Signer Is Representing: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**

Top of thumb here

CENTER POINT BUSINESS PARK, L.C.  
a Utah limited liability company

By: OHM, L.C., a Utah limited liability company  
Its: Manager

A handwritten signature in black ink, appearing to read "Jeffrey B. Hamilton", written over a horizontal line.

By: Jeffrey B. Hamilton, Manager

(See Attached Notary)

STATE OF CALIFORNIA  
COUNTY OF Stanislaus

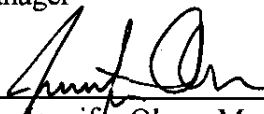
On the 7<sup>th</sup> day of February, 2005 personally appeared before me Jeffrey R. Hamilton, the signer of the foregoing instrument who duly acknowledged to me that he is the Manager of OHM, LC, the Manager of Center Point Business Park, L.C., is authorized to execute this document on behalf of Center Point Business Park, L.C. and that he executed the same.

*Melissa Sereno*  
\_\_\_\_\_  
Notary Public




CENTER POINT BUSINESS PARK, L.C.  
a Utah limited liability company

By: OLSEN FAMILY ENDEAVORS, L.C.  
a Utah limited liability company  
Its: Manager

  
\_\_\_\_\_  
By: Jennifer Olsen, Manager

STATE OF UTAH  
COUNTY OF SALT LAKE

On the 9<sup>th</sup> day of February, 2005 personally appeared before me Jennifer Olsen, the signer of the foregoing instrument who duly acknowledged to me that she is the Manager of Olsen Family Endeavors, L.C., is authorized to execute this document on behalf of Olsen Family Endeavors, L.C. and that she executed the same.

  
\_\_\_\_\_  
Notary Public

