

Staff Summary Report



Council Meeting Date: 11/08/07

Agenda Item Number: _____

SUBJECT: Request approval of a resolution authorizing the City Manager to sign the First Amendment to the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Centerpoint Plaza.

DOCUMENT NAME: 20071108cdcm03 **DEVELOPMENT PROJECT (0406)**
Resolution. 2007.93

SUPPORTING DOCS: Yes

COMMENTS: The City is a party to the CCRS for Centerpoint Plaza. The CCRS cover all of the property on the corner of University and Ash. The Mosaic project recently purchased a small portion of property from Chase Bank, consisting of the surface parking lot adjacent to the parking structure on the west side of Ash Avenue (the "Mosaic Property"). The owner of the Mosaic is asking that this small piece of property be excluded from the Centerpoint CC&R's. Because the City is a party to the original CCRs, the City must consent to the amendment.

PREPARED BY: Chris Messer, Principal Planner (Ext. 8562)

REVIEWED BY: Chris Salomone, Community Development Director (Ext. 8294)

LEGAL REVIEW BY: Cynthia McCoy, Assistant City Attorney (Ext 2187)

FISCAL NOTE: There is no fiscal impact with this action.

RECOMMENDATION: Staff recommends approval of the Resolution.

RESOLUTION NO. 2007.93

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE CITY MANAGER TO EXECUTE A FIRST AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR CENTERPOINT PLAZA

WHEREAS, the City is the owner of property that is subject to the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements (CC&R's) for Centerpoint Plaza recorded on July 9, 2001, at Document No. 2001-0610791, Official Records of Maricopa County Recorder, Maricopa County, Arizona, and

WHEREAS, pursuant to Section 5.2 of the CC&R's, the CC&R's may be amended by the unanimous consent of all Owners, and

WHEREAS, the Owners desire to amend the CC&R's in certain respects, as set forth in the First Amendment to the CC&R's attached hereto.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

1. That the City Manager is hereby authorized and directed to execute the First Amendment to the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Centerpoint Plaza, and to take such other actions as are necessary or convenient to implement the removal of the property described in the First Amendment from the operation of the CC&Rs.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2007.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

When recorded, return to:

DMB Associates
Gainey Ranch Town Center II
7600 E. Doubletree Ranch Road
Suite 300
Scottsdale, Arizona 85258-2137
Attention: General Counsel

**FIRST AMENDMENT TO THE
AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
CENTERPOINT PLAZA**

This First Amendment to the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Centerpoint Plaza (this "First Amendment") is made as of _____, 2007, by CENTERPOINT HOLDINGS LLC, a Delaware limited liability company, CHASE BANKCARD SERVICES, INC., a Delaware corporation, HPTMI II PROPERTIES TRUST, a Maryland real estate investment trust, CITY OF TEMPE, an Arizona municipal corporation, and TEMPE LAND COMPANY, LLC, an Arizona limited liability company (collectively, the "Owners").

Recitals

A. The "Declaration" is that certain Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Centerpoint Plaza recorded on July 9, 2001, at Document No. 2001-0610791, Official Records of Maricopa County Recorder, Maricopa County, Arizona.

B. Pursuant to Section 5.2 of the Declaration, the Declaration may be amended by the unanimous consent of all Owners if such amendment affects the allocation of Common Area Maintenance Costs or affects the voting rights or requirements set forth in the Declaration.

C. The Owners comprise all of the owners of real property within "Centerpoint Plaza", as defined in the Declaration, as of the date of this First Amendment.

D. The Owners desire to so amend the Declaration pursuant to the terms and conditions set forth herein.

AMENDMENT

NOW, THEREFORE, the Owners amend the Declaration as follows:

1. Land Subject to the Declaration. The Owners hereby declare that the real property described on Exhibit "A" attached hereto (the "Exception Parcel") is no longer

considered to be a part of Centerpoint Plaza, and, therefore, the Exception Parcel is no longer intended to, nor shall it be, subject to or encumbered by the Declaration.

2. Capitalized Terms. Unless otherwise defined herein, all capitalized terms used in this First Amendment shall have the meanings set forth in the Declaration.

3. No Further Amendment. Except as expressly amended hereby, all other provisions of the Declaration as originally written shall remain in full force and effect.

4. Inurement. This First Amendment shall be binding upon and inure to the benefit of the successors and assigns, if any, of the respective parties hereto.

Signature and Notary Pages Attached

IN WITNESS WHEREOF, each Owner has caused this First Amendment to be duly executed as of the date first above written.

CENTERPOINT HOLDINGS LLC, a Delaware limited liability company, successor by merger with Centerpoint Plaza Limited Partnership, an Arizona limited partnership, successor by merger with CPT Development Partners Limited Partnership, an Arizona limited partnership

By: DMB Consolidated Holdings, L.L.C.,
an Arizona limited liability company,
its Manager

By: DMB Associates, Inc.,
an Arizona corporation,
its Manager

By: _____
Print Name: _____
Its : _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged to me this ____ day of _____, 2007,
by _____, the _____ of
_____, for and on behalf thereof.

Notary Public

Additional Signature and Notary Pages Attached

CHASE BANKCARD SERVICES, INC.,
a Delaware corporation

By: _____

Print Name: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of _____)

On this, the ____ day of _____, 2007 before me, the undersigned Notary Public, personally appeared _____, the _____ of Chase Bankcard Services, Inc., a Delaware corporation, and acknowledged that he/she executed the within and foregoing instrument for and on behalf of the companies, being authorized so to do, for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

Additional Signature and Notary Page Attached

HPTMI II PROPERTIES TRUST,
a Maryland real estate investment trust

By: _____
Print Name: _____
Its: _____

STATE OF ARIZONA)
) ss.
County of _____)

On this, the ____ day of _____, 2007 before me, the undersigned Notary Public, personally appeared _____, the _____ of HPTMI II Properties Trust, a Maryland real estate investment trust, and acknowledged that he/she executed the within and foregoing instrument for and on behalf of the companies, being authorized so to do, for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

Additional Signature and Notary Page Attached

CITY OF TEMPE,
an Arizona municipal corporation

By: _____
Jeff Kulaga
Acting City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF ARIZONA)
)ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____day of _____, 2007.

Notary Public

Additional Signature and Notary Page Attached

By: _____
Print Name: _____
Its: _____

EXHIBIT A

Exception Parcel

A portion of Lots 1, 2, 3 and 4 of TEMPE, as recorded in Book 2 of Maps, page 26, records of Maricopa County, Arizona, located in the Southwest quarter of Section 15, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

COMMENCING at the brass cap in handhole at the intersection of the monument line of University Drive and Ash Avenue from which the brass cap in handhole at the intersection of University Drive and Maple Avenue bears North 89 degrees 59 minutes 42 seconds East 349.00 feet, as shown on CENTERPOINT, as recorded in Book 369 page 31, records of Maricopa County, Arizona, said line being the monument line of University Drive and the basis of the bearings in this description;

THENCE North 00 degrees 01 minute 05 seconds East 230.98 feet along the monument line of said Ash Avenue to a brass cap flush;

THENCE South 89 degrees 59 minutes 42 seconds West 40.00 feet to the POINT OF BEGINNING;

THENCE continuing South 89 degrees 59 minutes 42 seconds West 113.14 feet along the South line of the East–West alley within Block 18 of said TEMPE to the Southerly extension of the West line of the East 3.00 feet of Lot 4 of said Block 18;

THENCE North 00 degrees 05 minutes 12 seconds East 110.00 feet along said West line to the South line of the North 75.00 feet of said Lot 4;

THENCE North 89 degrees 59 minutes 42 seconds East 103.17 feet along said South line and the South line of the North 75.00 feet of Lots 3, 2 and 1 of said Block 18 to a point 40.00 feet West of and parallel with the monument line of said Ash Avenue, and the beginning of a non–tangent curve the center of which bears South 79 degrees 47 minutes 55 seconds West 620.00 feet;

THENCE Southerly along said parallel line and the arc of said non–tangent curve through a central angle of 10 degrees 13 minutes 09 seconds an arc distance of 110.58 feet to the POINT OF BEGINNING.

COMPRISING 0.277 acres or 12,078 square feet more or less, subject to all easements of record.