MEETING DATE: 04/21/08

AGENDA ITEM: Consideration of the *Amendment to Purchase and Sale Agreement* with Conjunctive Points Warner Development, LLLP Regarding the Sale of 8511 Warner Drive, Culver City

ATTACHMENTS

City of Culver City, California
City Council Agenda Item Report

Meeting Date: 03/27/06	Item Number: A-6
AGENDA ITEM: **Consideration of the Sale of 8511 Warner Drive to Conjunctive Points Warner Development, LLLP.**	
Contact Person/Dept.: John Fisanotti	Phone Number: (310) 253-5767
Fiscal Impact: Yes [X] No []	General Fund: Yes [X] No []
Public Hearing: [] Action Item: [X]	Attachments: [X]
Public Notification: All property owners and businesses in the Hayden Tract were notified on March 13, 2006. Master Notification List on March 22, 2006.	
Department Approval: Susan Evans (3/16/06)	CAO Approval: Jerry B. Fulwood (03/23/06)
City Controller Approval: Marlee Chang (03/22/06)	

RECOMMENDATION:

It is recommended that the City Council of the City of Culver City approve the sale of the real property at 8511 Warner Drive, Culver City, to Conjunctive Points Warner Development, LLLP, pursuant to the terms and conditions in the Purchase and Sale Agreement.

BACKGROUND:

The City of Culver City acquired the real property at 8511 Warner Drive in 1957 and it has been used as a public parking lot ever since. Recently, staff has been negotiating with Mr. Frederick Smith and his representatives over the terms of a transaction to sell the parking lot to Conjunctive Points Warner Development, LLLP, an organization controlled by Mr. Smith. Currently, the parking lot contains 242 spaces and has recently been converted to monthly reserved use. Staff obtained an appraisal, which determined the fair market value of the property to be $5,500,000. Mr. Smith obtained his own appraisal, which concluded that fair market value is $5,457,600, which was in close agreement with staff's appraisal.

DISCUSSION:

The proposed terms and conditions of the sale are as follows:

- The sale price is $5,457,600.00. Half of that amount, ($2,728,800.00) is to be paid in cash at close of escrow. The other half would be paid through a Note secured by a First Deed of Trust, the terms of which are:
  - Term: 24 months,

- Interest Rate: 8% per annum, simple interest;
  - Payment in a single lump sum of $2,728,000 (principal) and $436,480 (interest-estimated) no later than 24 months after close of escrow;
- The escrow period is seventy-five (75) days;
- Buyer must retain ownership of the property for at least ten years;
- Buyer and seller to execute and record a Public Parking Covenant to ensure that for the next ten years, regardless of what use the buyer puts the property to, the buyer is obligated to provide 242 public parking spaces either on the property or nearby. This provision further provides that the buyer must submit for approval to Assistant Executive Director of the Culver City Redevelopment Agency, a Management and Operation Plan for the 242 public parking spaces.

The property to be conveyed is all of the Warner Parking lot, less the fee underlying the MTA spur right of way, which is adjacent to the parking lot.

At the Council's direction, staff has begun looking at other property in the Hayden Tract which could be acquired to provide still more parking for Hayden Tract businesses. The results of this research will be scheduled for consideration by the Culver City Redevelopment Agency at a later date.

FISCAL ANALYSIS:

The City will receive fifty per cent (50%) of the sale price ($2,728,000) to the general fund at close of escrow. Two years later, the City will receive in the general fund the same amount, plus 8% simple interest

ATTACHMENTS:

1. Public Notice
2. Purchase and Sale Agreement, with attachments

MOTION:

That the City Council:

1. Approve the sale of the real property at 8511 Warner Drive, pursuant to the terms and conditions in the Purchase and Sale Agreement by and Among the City of Culver City and Conjunctive Points Warner Development, LLLP, and all attached documents, thereto; and

2. Authorize the Chief Administrative Officer to execute the Purchase and Sale Agreement By and Among Conjunctive Points Warner Development, LLLP, and all necessary related documents to effect the sale.

3. Authorize the Chief Administrative Officer to execute on behalf of the City the Public Parking Covenants Affecting Real Property, by and among City of Culver City and Conjunctive Points Warner Development, LLLP.

SAMITAUR CONSTRUCTS
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3528 HAYDEN AVE. CULVER CITY, CALIFORNIA 90232 T(310) 204-4464 F(310) 2[illegible]4-4465

April 16, 2008

HAND DELIVERED

Todd Tipton
Culver City Redevelopment Agency
9770 Culver Boulevard
Culver City, CA 90232

Re: Conjunctive Points Warner Development, LLC: Amendment of <u>Purchase and Sale Agreement and Amended Promissory Note</u>

Dear Todd:

Enclosed find the signed Amendment of Purchase and Sale Agreement and amended Promissory Note Secured by Deed of Trust in the amount of $2,728,800. These documents are being delivered together with a check in the amount of $20,466. Upon acceptance of these documents by the City, the due date of the Promissory Note will be extended from June 12, 2008 until June 12, 2009. Further, on or before June 12, 2008, Conjunctive Points Warner Development, LLC will pay Culver City accrued interest of $436,608. We would like to have these matters presented to the council for their prompt review and final approval.

Following notice from the Court of Appeal that it intends to affirm the lower court's decision in the Warner lawsuit by Mr. Martin, John called me on Monday afternoon and questioned the effect of the Court of Appeal's pending decision on the Note extension. We do not believe the Court of Appeal's affirmance, when it becomes final, has anything to do with the requested extension. The extension request was made based upon Warner Development's inability to move forward with its development plans while title to the property has been clouded by the pending lawsuit and appeal. The lawsuit and appeal have been ongoing for a period of almost 2 years. At this time, we have no idea whether or not Martin will appeal the Appellate Court's decision to the California Supreme Court or whether the California Supreme Court would accept and review the case.

We respectfully request that the Amended Promissory Note and Amendment of Purchase and Sale Agreement be submitted for final approval to the current council in accordance with the council's prior approval and direction.

Very truly yours,

Stephen A. Lewis

cc: Frederick N. Smith
John Fisanotti

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AMENDMENT TO PURCHASE AND SALE AGREEMENT

This Amendment to the Purchase and Sale Agreement (the "Amendment") is entered into by and between the CITY OF CULVER CITY, a municipal corporation (the "City"), and CONJUNCTIVE POINTS WARNER DEVELOPMENT, LLLP, a Delaware limited liability limited partnership (the "Buyer").

For and in consideration of the mutual covenants and conditions herein set forth, the City and the Buyer hereby agree as follows:

I. [§100] PURPOSE OF AMENDMENT

The City and Buyer have heretofore entered into that certain Purchase and Sale Agreement dated March 28, 2006 (the "Agreement") relating to the sale of that certain real property more particularly described in the legal description attached hereto as Exhibit "A" and incorporated herein by this reference (the "Property"). Except as expressly provided herein, all capitalized terms shall have the meaning set forth in the Agreement. The Property as defined in the Agreement was conveyed by the City to the Buyer in accordance with the Agreement by Grant Deed recorded on June 12, 2006, as Document Number 06-1279458 among the records of the County Recorder of the County of Los Angeles (the "Grant Deed"). Concurrently with such conveyance, Public Parking Covenants were recorded against the Property on June 12, 2006, as Document Number 06-1279457 among the records of the County Recorder of the County of Los Angeles ("Parking Covenants"). Also concurrently with such conveyance, to secure City's interest in that certain Promissory Note executed by Buyer dated June 12, 2006 in the amount of TWO MILLION SEVEN HUNDRED TWENTY EIGHT THOUSAND EIGHT HUNDRED DOLLARS ($2,728,800) (the "Promissory Note"), Buyer executed that certain First Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) recorded against the Property on June 12, 2006, as Document Number 06-1279459 among the records of the County Recorder of the County of Los Angeles ("First Deed of Trust").

The Agreement provides for the conveyance of the Property from City to Buyer and Buyer's acquisition of such Property from City, for a purchase price in the amount of FIVE MILLION FOUR HUNDRED FIFTY SEVEN THOUSAND SIX HUNDRED DOLLARS ($5,457,6000) (the "Purchase Price"). Pursuant to Section II. B. of the Agreement, fifty (50%) of the Purchase Price in the amount of TWO MILLION SEVEN HUNDRED TWENTY EIGHT THOUSAND EIGHT HUNDRED DOLLARS ($2,728,800) was payable in cash at the Close of Escrow (as defined therein) (the "Cash Portion of Purchase Price"). The remaining Fifty (50%) of the Purchase Price in the amount of TWO MILLION SEVEN HUNDRED TWENTY EIGHT THOUSAND EIGHT HUNDRED DOLLARS ($2,728,800) was payable to City by Buyer at the Close of Escrow in the form of a Promissory Note payable twenty-four (24) months after the Close of Escrow (the "Purchase Price Balance").

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The purpose of this Amendment is to amend the terms of Buyer's obligation to pay the Purchase Price Balance evidenced in the Promissory Note and Secured by the First Deed of Trust.

II. [§ 200] EFFECT OF AMENDMENT

Except as expressly provided otherwise in this Amendment, the First Deed of Trust remains in full force and effect, enforceable in accordance with its terms, without diminution or waiver of any kind of any right or remedy of the City thereunder.

III. [§300] PAYMENT OF BALANCE OF PURCHASE PRICE

Section II. B. 2. of the Agreement is hereby deleted in its entirety and replaced with the following:

"Payment of the remaining fifty percent (50%) of the Purchase Price ($2,728,800.00) shall be made on or before June 12, 2008 in the form of an Amended Promissory Note in favor of the City in the amount of TWO MILLION SEVEN HUNDRED TWENTY EIGHT THOUSAND AND EIGHT HUNDRED DOLLARS ($2,728,800.00), plus all interest accrued during the third year, payable by Buyer thirty-six (36) months after the Close of Escrow (the "Purchase Price Balance"). Unpaid principal under the Amended Promissory Note shall accrue simple interest at the rate of eight percent (8%) per annum. The Amended Promissory Note shall conform in form and substance to the form attached hereto as Amended Exhibit "C" which is incorporated herein by this reference. The Amended Promissory Note evidencing Buyer's obligation to pay the Purchase Price Balance shall be secured by that certain First Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) executed by Buyer and recorded against the Property on June 12, 2006, as Document Number 06-1279459 among the records of the County Recorder of the County of Los Angeles ("First Deed of Trust"). The Amended Promissory Note shall be executed by Buyer and delivered to City on or before June 12, 2008.

City shall accept the Amended Promissory Note upon the satisfaction of the following Conditions Precedent prior to or on June 12, 2008:

(i) Buyers payment to City of all accrued interest earned up to June 12, 2008 on the Promissory Note executed by Buyer in favor of City dated June 12, 2006 in the total amount of FOUR HUNDRED THIRTY SIX THOUSAND SIX HUNDRED EIGHT DOLLARS ($436,608).

IV. [§400] AMENDED PROMISSORY NOTE

Exhibit "C", the Promissory Note, of the Agreement is hereby amended in its entirety as set forth in Amended Exhibit "C" attached hereto and incorporated hereby by this reference (the "Amended Promissory Note"). Wherever the First Deed of Trust or any other document executed or entered into pursuant to the Agreement refers to the

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Promissory Note, the reference shall mean the Amended Promissory Note, Amended Exhibit "C" as amended by this Amendment.

V. [§500] PAYMENT OF TRANSACTION FEE

In consideration of City entering into this Amendment with Buyer, the receipt and sufficiency of which is acknowledged by all parties, Buyer acknowledges and agrees to pay to City a transaction fee in the amount of TWENTY THOUSAND FOUR HUNDRED SIXTY SIX DOLLARS ($20,466) (equal to .0075 percentage points of the Purchase Price Balance) (the "Transaction Fee") upon the execution of this Amendment by Buyer.

VI. [§600] DUPLICATE ORIGINALS

This Amendment may be signed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument.

[signatures on following pages]

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CITY OF CULVER CITY

Dated: _____________, 2008

By: _____________________________
Jerry Fulwood
City Manager

APPROVED AS TO FORM

BY: _____________________________
Carol A. Schwab
City Attorney

KANE, BALLMER & BERKMAN
Special Counsel

By: __________________________
Murray O. Kane

APPROVED AS TO CONTENT

By: _____________________________
Sol Blumenfeld
Community Development Director

[signatures continued on following page]

CONJUNCTIVE POINTS WARNER DEVELOPMENT, LLLP, a Delaware limited liability limited partnership

Dated: 4-15, 2008

By: Frederick N. Smith

Frederick N. Smith
President of Conjunctive Points Warner Development, Inc., General Partner of Conjunctive Points Warner Development, LLLP

APPROVED AS TO FORM AND CONTENT

By: Edward W. Wachtel 4/11/2008

Edward W. Wachtel
Counsel to Conjunctive Points Warner Development, LLLP

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4.2.08

EXHIBIT "A"

LEGAL DESCRIPTION

All the certain real property located in the City of Culver City, County of Los Angeles, State of California, described as follows:

Lots 30, 31, 32 and 33 of Tract No. 13503, in the City of Culver City, as per map recorded in Book 278 pages 38 and 39 of Maps, in the office of the county recorder of said county.

Except the Easterly 21 feet of said lot 33 and the Northerly 25 feet of said lots 30, 31, 32 and 33.

APN: 4205-023-901

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AMENDED EXHIBIT "C"

AMENDED PROMISSORY NOTE

(behind this page)

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FORM OF AMENDED PROMISSORY NOTE
SECURED BY DEED OF TRUST

$2,728,800
8% interest

_____________, 2008
Culver City, California

RECITALS

A. The City of Culver City, a municipal corporation (the "City") and Conjunctive Points Warner Development, LLLP, a Delaware limited liability limited partnership (the "Buyer") have entered into that certain Purchase and Sale Agreement dated March 28, 2006 which was amended by that certain Amendment to Purchase and Sale Agreement dated _____________, 2008 incorporated herein by this reference (collectively referred to herein as the "Agreement") , pursuant to which Buyer has acquired that certain real property located at 8511 Warner Drive, Culver City, California, described as set forth in the First Deed of Trust Security Agreement and Fixture Filing (With Assignment of Rents) recorded against the Property on June 12, 2006, as Document Number 06-1279459 among the records of the County Recorder of the County of Los Angeles ("First Deed of Trust") securing this Amended Promissory Note (the "Property").

B. Buyer executed that certain Promissory Note dated June 12, 2006 in favor of City in the amount of TWO MILLION SEVEN HUNDRED TWENTY EIGHT THOUSAND AND EIGHT HUNDRED DOLLARS ($2,728,800.00) to be replaced in its entirety by this Amended Promissory Note (the "Original Promissory Note").

C. In accordance with, subject to, and conditioned on all terms, covenants and conditions of the Agreement, payment of the Purchase Price Balance, as defined in the Agreement, in the amount of TWO MILLION SEVEN HUNDRED TWENTY EIGHT THOUSAND AND EIGHT HUNDRED DOLLARS ($2,728,800.00) shall be made by this Amended Promissory Note in favor of the City. Buyer acknowledges that but for the execution of this Amended Promissory Note, City would not amend the Agreement or permit payment of the Balance of the Purchase Price pursuant to this Amended Promissory Note as contemplated therein. Unless otherwise defined in this Amended Promissory Note, each capitalized term shall have the meaning ascribed to such term in the Agreement.

i) Principal.

For value received, Buyer promises to pay to the order of the City of Culver City, 9770 Culver Boulevard, Culver City, CA 90232, or assignee, or at such other place as the City or its assignee may from time-to-time designate in writing, the principal sum of TWO MILLION SEVEN HUNDRED TWENTY-EIGHT THOUSAND EIGHT HUNDRED DOLLARS ($2,728,800), together with the accrued interest from June 12, 2006, the date of the Original Promissory Note, on the unpaid principal at the applicable rate as set forth in Paragraph 4. This Amended Promissory Note is issued pursuant to,

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entitled to the benefits of and referred to as the Amended Promissory Note in the Agreement. This Amended Promissory Note, the Deed of Trust, and the Agreement are sometimes collectively referred to herein as the "City Documents."

ii) Payment Dates.

Buyer shall not be required to make any payment to the City in respect of this Amended Promissory Note other than as provided in this Section 2:

a. On or prior to June 12, 2008, Buyer shall pay to City all interest accrued as of June 12, 2008 on the unpaid principal amount due under this Amended Promissory Note in the total amount of FOUR HUNDRED THIRTY SIX THOUSAND SIX HUNDRED EIGHT DOLLARS ($436,608); and

b. The entire principal amount of the indebtedness evidenced by this Amended Promissory Note, with accrued interest from June 13, 2008 on the unpaid principal, shall be all due and payable as follows (the "Maturity Date"):

(i) Thirty-six (36) months after the Close of Escrow; or

(ii) If Buyer defaults under any of the City Documents, and if such default is not cured within thirty (30) days after notice.

iii) Interest Rate.

The entire principal amount outstanding shall bear simple interest at the rate of eight percent (8%) per annum. Interest shall be payable as provided in Section 2, above.

iv) Lawful Money.

Principal and interest are payable in lawful money of the United States of America.

v) Applications of Payments: Late Charges.

(1) All payments to the City shall be applied first to accrued interest, then to reduce the principal amount owed.

(2) If any payment of interest and/or principal is not received by the City on the due date thereof, then in addition to the remedies conferred upon the City pursuant to paragraph 10 hereof and the other City Documents, (1) a late charge of four percent (4%) of the amount due and unpaid will be added to the delinquent amount to compensate the City for the expense of handling the delinquency and (2) the amount due and unpaid, including the late charge, shall bear interest at the lesser of the highest annual rate which may lawfully be charged and collected under applicable law on the obligation evidenced by this Amended Promissory Note or an annual rate which shall be four percent (4%)

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higher than the Bank of America reference rate, computed from the date on which the amount was due and payable until paid.

vi) Security.

This Amended Promissory Note is secured by the First Deed of Trust which creates a first lien on the Property.

vii) Event of Default.

The occurrence of any of the following shall be deemed to be an event of default ("Event of Default") hereunder:

(1) Default in the payment of principal or interest or any other amounts when due pursuant to the terms hereof; or

(2) The occurrence of Event of Default under the Deed of Trust now or hereafter securing this Amended Promissory Note including any amendment, modification or extension thereof, or any of the other City Documents.

viii) Remedies.

Upon the occurrence of an Event of Default and the expiration of any applicable cure period therefor, then at the option of the City, the entire balance of principal together with all accrued interest thereon shall, without demand or notice, immediately become due and payable. No delay or omission on the part of the City in exercising any right under this Amended Promissory Note or under any of the other City Documents shall operate as a waiver of such right.

9. Waiver.

Buyer hereby waives diligence, presentment, protest and demand, notice of protest, dishonor and nonpayment of this Amended Promissory Note, and expressly agrees that, without in any way affecting the liability of Buyer hereunder, the City may extend any maturity date or the time for payment of any installment due hereunder, accept additional security, release any party liable hereunder and release any security now or hereafter securing this Amended Promissory Note. Buyer further waives, to the full extent permitted by law, the right to plead any and all statutes of limitations as a defense to any demand on this Amended Promissory Note, or on any deed of trust, security agreement, guaranty or other agreement now or hereafter securing this Amended Promissory Note.

10. Attorneys' Fees.

If this Amended Promissory Note is not paid following an Event of Default, Buyer promises to pay all costs of enforcement and collection, including but not limited

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to, reasonable attorneys' fees, whether or not any action or proceeding is brought to enforce the provisions hereof.

11. Severability.

Every provision of this Amended Promissory Note is intended to be severable. In the event any term or provision hereof is declared by a court of competent jurisdiction, to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

12. Interest Rate Limitation.

It is the intent of Buyer and the City in the execution of this Amended Promissory Note and all other instruments securing this Amended Promissory Note that the indebtedness evidenced hereby be exempt from the restrictions of the usury laws of the State of California. The City and Buyer stipulate and agree that none of the terms and provisions contained herein or in any of the City Documents shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of California. In such event, if the City shall collect monies which are deemed to constitute interest which would otherwise increase the effective interest rate on this Amended Promissory Note to a rate in excess of such maximum rate shall, at the option of the City, be credited to the payment of the sums due hereunder or returned to Buyer.

13. Number and Gender.

In this Amended Promissory Note the singular shall include the plural and the masculine shall include the feminine and neuter gender, and vice versa, if the context so requires.

CONJUNCTIVE POINTS WARNER
DEVELOPMENT, LLLP, a Delaware
limited liability limited partnership

Dated: _____________, 2008

By: ______________________________

Frederick N. Smith
President of Conjunctive Points
Warner Development, Inc., General
Partner of Conjunctive Points
Warner Development, LLLP

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