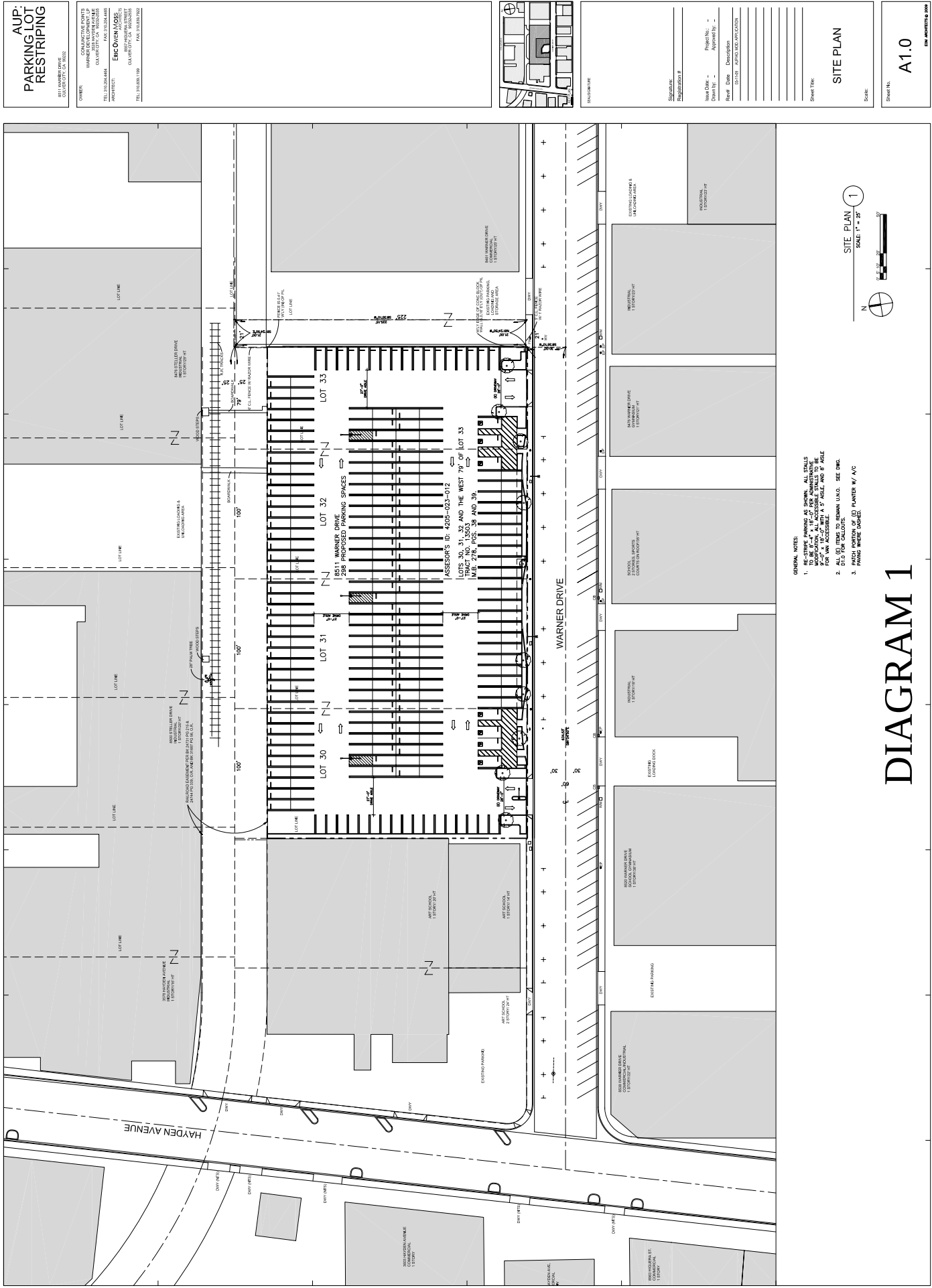


MEETING DATE: **06.28.10**

AGENDA ITEM: **PUBLIC HEARING - Consideration of Directing Staff to Prepare a Resolution Approving (1) an Administrative Use Permit for Tandem Parking and (2) an Administrative Modification to Allow a Reduction of Parking Stall Widths and (3) Amending a Public Parking Covenant to Permit Tandem Parking and on an Existing Surface Parking Lot at 8511 Warner Drive.**

ATTACHMENTS

	<u>Pages</u>
1. Proposed Tandem Parking Layout Plans	1-2
2. Plan for Implementation of Tandem Parking/Parking Attendant System	3-5
3. Draft Covenant Amendment	6-12
4. Applicant's Correspondence and Draft Covenant	13-29
5. Spur Property Owners' Letter	30-31



[illegible]

ATTACHMENT 2

Plan for Implementation of Tandem Parking/Parking Attendant System at Warner Drive Parking Lot (3/19/2010)

The purpose of this document is to present to the City of Culver City a plan and program for implementation of tandem parking at the surface parking lot owned by Conjunctive Points Warner Development, LLC (CPWD) on Warner Drive in the Hayden Tract area of Culver City. The plan is being implemented to help accommodate a portion of the existing excess demand for parking which CPWD is aware of in the area (as evidenced by its own waiting list for spaces at the lot), and to accommodate a limited number of short term hourly users the need for which it is also aware exists. The goal is to reduce on-street parking congestion in the area and to minimize the impact of illegal parking in adjacent neighborhoods.

- 1) CPWD will restripe the lot pursuant to the attached Diagram No. 1, adding 56 tandem spaces and increasing the total number of spaces available at the lot from 242 to 298. In the event CPWD acquires the right to use the surface of one-half of the railroad easement currently owned by the City, this area may be resurfaced and striped pursuant to the attached Diagram No. 2, adding an additional 40 triple

ATTACHMENT 2

tandem spaces and increasing the number of spaces available at the lot from 242 to 338.

- 2) All monthly users of the lot will be issued a tag which must be displayed in the front window of their car.
- 3) Based upon actual demand, CPWD will station qualified parking attendants at the lot from 7A.M. to 7 P.M. Monday through Friday (except Federal holidays), or lesser hours if demand is less. Cars will be parked at the lot on a first come first served basis with no reserved spaces assigned. Earlier arrivals will be instructed to take the innermost spots in the tandem configured spaces. Those users taking innermost parking spaces will be instructed to take their car keys.
- 4) All later arriving tandem parkers who create a potential blockage will be asked to leave their keys with the attendants who will maintain a locked key box at the entry shack stationed near the west entrance. Parkers creating a potential blockage will be reminded to retrieve their keys by 7 P.M. The attendants will resolve all potential blockages before leaving the lot. Keys that are not picked up by 7 P.M. will be held at the parking security guard building located at National and Hayden which remains open with an attendant 24 hours a day.
- 5) All requisite insurance policies will be maintained in full force and effect.

ATTACHMENT 2

- 6) Ingress into and egress out of the lot will be maintained through the two existing entrances off of Warner.
- 7) Provided there is demand, provision for up to 20 short term hourly parkers will be made with hourly rates posted at the west entrance.
- 8) Nothing in the plan will interfere with or expand CPWD's duties under the Public Parking Covenants to provide 242 spaces to Hayden Tract Property Owners through June 12, 2016.
- 9) If there is adequate demand for additional parking by Hayden Tract Property Owners and their tenants, CPWD may provide shuttle service in and around the Hayden Tract. The shuttle service would be operated from 7 A.M. to 7 P.M., Monday through Friday (excluding Federal holidays) or such other times as may be warranted.

OFFICIAL BUSINESS Document
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Government Code Section 6103 and 27383

Recording Requested by
And When Recorded Return to:
CITY OF CULVER CITY
9770 Culver Boulevard
Culver City, California 90232
Attention: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**FIRST AMENDMENT OF PUBLIC PARKING COVENANTS
AFFECTING REAL PROPERTY**

THIS FIRST AMENDMENT OF PUBLIC PARKING COVENANTS AFFECTING REAL PROPERTY ("Amendment") dated _____, 2010 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 "Conjunctive Points").

RECITALS

A. City and Conjunctive Points 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 (collectively the "Purchase Agreement"), incorporated herein by this reference, wherein City conveyed to and Conjunctive Points acquired, subject to the Public Parking Covenants, that certain real property legally described in the "Legal Description" attached hereto as Exhibit "A" and incorporated herein by this reference (the "Property").

B. Pursuant to the Purchase Agreement, City and Conjunctive Points entered into that certain Public Parking Covenants Affecting Real Property which was recorded against the Property on June 12, 2006, as Document Number 06-1279457 among the official records of the County Recorder of the County of Los Angeles (the "Official Records"), as clarified by that certain Clarification of Public Parking Covenants recorded on December 17, 2008 in the Official Records as Document No. 2008-2212286 (the "Public Parking Covenants"), incorporated herein by this reference. Any capitalized term not defined herein shall have the meaning ascribed to such term in the Public Parking Covenants.

C. On March 11, 2009, Conjunctive Points filed for an Administrative Use Permit ("AUP") with the Culver City Planning Division for authority to tandem park on the Property which would allow for an additional 56 parking spaces at the Property. The AUP included a management and operation plan. The Public Parking Covenants do not currently allow for tandem parking and require an amendment to the Public Parking Covenants. The parties hereto now desire to amend the Public Parking Covenants to allow for tandem parking on the Property, subject to and in accordance with all terms and conditions of this Amendment.

AMENDMENT OF THE PUBLIC PARKING COVENANTS

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions set forth herein, City and Conjunctive Points hereby agree as follows:

1. Tandem Parking. Section 1.a of the Parking Covenants shall be amended to add the following Subparagraph:

“(15) During the Term of these Public Parking Covenants and thereafter, Buyer shall have the right to implement tandem parking on the existing surface parking lot currently located on the Property subject to a specific management and operation plan first approved in writing by the City Manager or designee, in the City Manager or designee’s sole and absolute discretion, which approval may be conditioned upon the satisfaction of such terms and conditions as the City Manager or designee may prescribe. The management and operations plan shall contain, among other things, a provision requiring a minimum of two (2) employees of Buyer to be present and remain on the Property at all times between the hours of ____ to ____ to assist with the parking and retrieval of vehicles to facilitate the orderly operation of the tandem parking.

The use of tandem parking will result in 56 additional parking spaces on the Property in excess of the two hundred forty-two (242) Public Parking Spaces (the “Tandem Parking Spaces”). All costs associated with installing, implementing, maintaining and operating the tandem parking and the Tandem Parking Spaces shall be paid solely by Buyer. The rental rate for the Tandem Parking Spaces shall be subject to the fair market Parking Rate requirements of Paragraph 1.a (8), above, except and unless: (1) an increase in the rental rate for the Tandem Parking Spaces above the fair market Parking Rate requirements of Paragraph 1.a (8) is necessary for Buyer to recover costs and get to the break even point, written supporting documentation of which shall be provided to the City Manager or designee prior to such rental rate increase; (2) a different rental rate for the Tandem Parking Spaces is first approved in writing by the City Manager or designee; or (3) the rental rate for the Tandem Parking Spaces is not effective until after the expiration of the term of these Public Parking Covenants.

The use of tandem parking and the Tandem Parking Spaces shall not increase Buyer’s obligation to provide the two hundred forty two (242) Public Parking Spaces required in this Public Parking Covenant except as follows:

- a. Buyer shall first offer the use of the Tandem Parking Spaces (i) to Public Users that are not affiliates of Buyer and/or Samitaur Constructs, and (ii) to the Willows Community School; and
- b. Before offering the use of the Tandem Parking Spaces to (i)

anyone other than a Public User that is not an affiliate of Buyer and/or an affiliate of Samitaur Constructs or (ii) anyone other than the Willows Community School, Buyer shall provide evidence satisfactory to the City Manager or designee that Buyer made diligent and good faith attempts and efforts to rent such Tandem Parking Spaces to (i) Public Users that are not affiliates of Buyer and/or Samitaur Constructs and (ii) to the Willows Community School; and

- c. Before offering the use of the Tandem Parking Spaces to an affiliate of Buyer or an affiliate of Samitaur Constructs, Buyer shall provide evidence satisfactory to the City Manager or designee that Buyer made diligent and good faith attempts and efforts to rent such Tandem Parking Spaces to (i) Public Users that are not an affiliate of Buyer and/or an affiliate of Samitaur Constructs and (ii) the Willows Community School.

Buyers right, subject to the terms and conditions herein, to implement and operate tandem parking and Tandem Parking Spaces granted in this paragraph (15) solely applies to the implementation and operation of tandem parking and the Tandem Parking Spaces on the existing surface parking lot currently located on the Property and does not include, extend or apply to any Substituted Parking (as defined herein), a Parking Structure (as defined herein) or that certain railroad easement owned by the City abutting the Property.”

2. Prohibition Against Reallocation of Public Parking Spaces; Reallocation of Tandem Parking Spaces. Conjunctive Points shall not reallocate the Public Parking Spaces currently allocated to the Public Users pursuant to the Public Parking Covenants for a period of three (3) years commencing on the date upon which this Amendment is recorded in the Official Records.

Conjunctive Points shall have the right to reallocate the Tandem Parking Spaces allocated to Public Users, including, but not limited to Hayden Tract property owners, immediately on a pro rata basis, provided such reallocation of the Tandem Parking Spaces is first confirmed in writing by the City Manager or designee.

3. Conjunctive Points acknowledges and agrees that this Amendment does not modify or alter in any way the manner in which the parking rate paid to Buyer by the Public Users and the Willows Community School for the use of the Public Parking Spaces is determined under the Public Parking Covenants. Conjunctive Point further acknowledges and agrees that (i) that the term “Property” as used herein and in the Public Parking Covenants does not include any portion of that certain railroad easement owned by the City abutting the Property, and (ii) this Amendment does not in any way grant Conjunctive Points permission, authority or right to access, use or occupy any portion of that certain railroad easement owned by the City abutting the Property.

4. This Amendment does not (i) grant or guarantee any entitlement to any additional parking spaces to Public Users or the Willows Community School beyond the 242 total parking spaces allocable to the Public Users and the Willows Community School as set forth in the Public Parking Covenants, except as set forth herein, (ii) grant Conjunctive Points permission, authority or right to access, use or occupy any portion of that certain railroad easement owned by the City abutting the Property at any time, (iii) grant Conjunctive Points permission, authority or right to implement tandem parking in connection with any Substituted Parking or a Parking Structure, or (iv) amend any City laws, codes or rules relating to the allocation or use of parking spaces.

5. Should a conflict arise between this Amendment and the Public Parking Covenants, the provisions of this Amendment shall prevail.

6. Except as expressly provided otherwise in this Amendment, the Public Parking Covenants remain in full force and effect, enforceable in accordance with its terms, without diminution or waiver of any kind of right or remedy of the City thereunder.

7. This Amendment shall become effective upon its execution by the City Manager or designee.

[remainder of page intentionally blank]

[signatures continued on the following page]

IN WITNESS WHEREOF, City and Conjointive Points have signed this Amendment as of the dates set opposite their signatures.

Dated: _____, 2010

“City”
CITY OF CULVER CITY

By: _____
P. Lamont Ewell
Interim City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

By: _____
Carol A. Schwab
City Attorney

By: _____
Sol Blumenfeld
Community Development Director

KANE, BALLMER & BERKMAN
Special Counsel

By: _____
Murray O. Kane

[signatures continued on the following page]

“Conjunctive Points”

**“CONJUNCTIVE POINTS WARNER
DEVELOPMENT, LLLP.** a Delaware limited
liability limited partnership

Dated: _____, 2010

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

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

CONJUNCTIVE POINTS WARNER DEVELOPMENT, LP
c/o Samitaur Constructs
3528 Hayden Avenue
Culver City, CA 90232
(310) 839-1334

June 21, 2010

Mr. Lamont Ewell, City Manager
City of Culver City
City Hall
9770 Culver Boulevard, 3rd Floor
Culver City, CA 90232

Re: Tandem Parking at the Warner Lot

Dear Mr. Ewell:

Thank you for continuing the hearing on our Warner Tandem Parking Request until June 28th. We also appreciate the time your team gave to go over our concerns about the staff's initially recommended conditions for an amendment of the Public Parking Covenants to expressly allow tandem parking at the Warner Lot. The purpose of this letter is to provide you with our response to the specific revised recommendations you presented to us at our meeting in City Hall on the 15th.

Brief Background Statement

In order to help place our specific responses to your suggested revised recommendations in an overall context, and by way of preface, as we expressed in our meeting of the 15th, Conjunctive Points Warner Development, LP (CPWD) feels an absolute obligation to administer the 8511 Warner Drive lot (Lot) according to the requirements set forth in the City imposed Public Parking Covenants (Covenants) which burden the property through June 12, 2016. The use of the Lot currently does not meet either the spirit or letter of the Covenants which were designed by the City to provide broad access to the spaces available at the Lot to all Hayden Tract Property Owners (HTPOs) for a period of 10 years (ending in 2016) via a basis which is "fair, equitable, reasonable and balanced".

As written, the Covenants are intended to benefit CPWD (and Samitaur Constructs) affiliates proportionately, on an equal footing with all other HTPOs. However, at present, CPWD/Samitaur affiliates do not use any of the 242 Public Parking Spaces. The 242 spaces are used by a group of HTPOs which CPWD inherited from the City at the time of the sale. Each

1.

user is on a month-to-month/at will tenancy which can be terminated on 30 days notice.

The current users of the 242 Public Parking Spaces were given their preferential month-to-month user rights by the City prior to CPWD's purchase of the Lot. There is a waiting list of more than 300 HTPOs who want a share of the 242 spaces. The Covenants impose the following duty on CPWD:

"(13) If Public Users desiring to lease Public Parking Spaces exceed the two hundred and forty-two (242) Public Parking Spaces provided for by these Public Parking Covenants, Buyer [CPWD] shall allocate the available Public Parking Spaces using a fair, equitable, reasonable and balanced basis."

There are 49 Hayden Tract property owners entitled to benefit from the parking available at the Lot. However, just five (5) Hayden Tract businesses use 216 (i.e. 89%) of the 242 publicly available spaces required to be made available to all HTPOs at the Lot. Many HTPOs have been denied access to Lot parking altogether or are restricted to renting a fraction of the spaces that they would be entitled to and would otherwise like to use. This is a situation which violates the terms, the spirit, and the intent of the Covenants. CPWD believes it is compelled to change this situation by reallocation of spaces based on an objective standard such as the square footage of the property owned within the Tract by the various HTPOs who wish to park at the Lot.

CPWD, however, is deeply torn by this requirement because the five users who stand to be hurt by such a reallocation are both our neighbors and our customers. CPWD wants to see their ability to succeed continued, not diminished. CPWD also wants to see the ability of other HTPOs enhanced, not ignored. CPWD has absolutely no desire to hurt or inconvenience these users in any way. Approval of an administrative use permit for tandem parking at the Lot (and at our parking structure at National and Hayden for which we have also applied for a tandem permit) would allow CPWD to minimize, if not eliminate, any negative impact from a space reallocation triggered by the Covenant requirements. As a consequence, CPWD's request to amend the Covenants to allow tandem parking is before the Council.

(As you know we disagree with the basic premise that any amendment to the Covenants is even required to allow for tandem parking in the first place. The Covenants are silent on the subject. Rather than belaboring this argument with the City's legal advisor, however, we asked for a simple clarification to the Covenants so that an additional 56 spaces can become available to the community by allowing tandem parking.)

CPWD's Response to the Redevelopment Agency's Suggested Revised Conditions to Allow Tandem Parking

Based upon our discussion on the 15th, you suggested that the staff would be amenable to some revisions to the set of conditions which had been originally forwarded to Council with our request. As we understand them, the five conditions in the revised staff recommendations are as follows:

- 1) The City will drop its request for a five year extension of the existing Covenants as a condition to approval of tandem.
- 2) Any parking space reallocation of the 242 parking spaces must be deferred for three years, at which time a pro rata allocation system could be put in place based on a "square footage of property owned" methodology.
- 3) After the three years, reallocation of the 242 spaces will not include affiliates of CPWD unless the 242 spaces are not taken by other HTPOs.
- 4) The 56 spaces which would be gained by converting the Lot to tandem could be allocated on a pro rata system immediately upon their creation. This allocation could include affiliates of CPWD.
- 5) Rents charged for any of the tandem spaces could not exceed the fair market price charged for the 242 parking spaces, or, if greater, an amount needed by CPWD to recover costs associated with implementing the tandem program.

Our response to your revised suggestions, along with our motivating rationale, is as follows:

City's Suggestion #1: The City will drop its request for a five year extension of the existing Covenants as a condition to approval of tandem.

CPWD's Response to Suggestion #1: Thank you. This was one of our primary objections to the initial set of staff recommendations.

City's Suggestion #2: Any parking space reallocation of the 242 parking spaces must be deferred for three years, at which time a pro rata allocation system could be put in place based on a "square footage of property owned" methodology.

CPWD's Response to Suggestion #2: The City's stated intent with respect to this recommendation is that it will give those displaced by the reallocation of the 242 parking spaces ample opportunity to make other

accommodations.

While we understand the underlying motivation for this recommendation, we must remain opposed to this condition for the following reasons:

- a) This condition is contrary to the City Council's clear intent when it initially imposed the Covenants which was to equitably benefit all HTPOs who express a need for additional parking. CPWD feels at risk from HTPOs being denied access to parking if CPWD does not carry through with a fair reallocation.
- b) All of the current 242 parking space users at the Lot are on a month-to-month tenancy. They should not need three years to make other arrangements. An agreement to defer reallocation for three years would, in essence, convert a month-to-month lease to a three year lease. This has the effect of providing a City subsidy and unearned windfall benefit to a select few at a cost to the balance of the Hayden Tract property owners.

City's Suggestion #3: After the three years, reallocation of the 242 spaces will not include affiliates of CPWD unless the 242 spaces are not taken by other HTPOs.

CPWD's Response to Suggestion #3: CPWD disagrees with this condition because it acts as a taking of property from CPWD and its affiliates without compensation. When CPWD bought the Lot from the City, it did so with an understanding that the Public Users included all Hayden Tract Property Owners and their tenants, a group which incorporated CPWD itself and all Samitaur affiliates (and their tenants). It makes no sense to impose a condition on the owner that allows the owner to create 56 additional tandem spaces for the community at the owners cost and expense and then deny the owner the right to use any portion of the 242 public parking spaces to which it was originally entitled.

While not willing to cede any of its rights, or seeking to avoid any of its obligations, **CPWD reminds you that neither CPWD itself, nor Samitaur Constructs, nor any of its affiliates or tenants, currently use any of the spaces at Warner and again re-states that the purpose of its tandem request, which will not cost the City anything, is to mitigate the impact of the required reallocation of spaces at Warner on the current users of the Lot.**

CPWD's Proposed Solution:

As reflected in CPWD's prior communications, the primary purpose for requesting tandem parking at the Warner Lot (and at the parking structure at National and Hayden) is to avoid displacement of any of the current users (or absolutely minimize it) when the reallocation is implemented while still

accommodating at least a portion (if not all) of the demand from those who have been denied access thus far. **CPWD would be willing to defer reallocation (perhaps indefinitely) until the true impact of tandem is known** provided that CPWD affiliates continue to maintain their pro rata right to share in any allocation of the 242 and the tandem spaces.

City's Suggestion #4: The 56 spaces which would be gained by converting to tandem could be allocated on a pro rata system immediately upon their creation.

CPWD's Response to Suggestion #4: CPWD agrees that this is a fair approach and should be maintained with respect to the 242 spaces.

City's Suggestion #5: Rents charged for any of the spaces could not exceed a fair market price, or cost recovery, for implementation of the tandem program, whichever is greater.

CPWD's Response to Suggestion #5: From a financial perspective, CPWD is interested only in the ultimate development of this property to its highest and best use. As you know, CPWD has already applied for and received approval of a mixed-use project which would serve to benefit the community long term. If built before January of 2016, that project must and would include at least 242 spaces which must be made available for Public Users until 2016. Those extra spaces will not disappear after 2016. CPWD would like to proceed with that project's ultimate development or development of a suitable substitute project.

CPWD has proposed a tandem parking operation at the Lot so that the impact of the required space reallocation on its existing users is minimized. CPWD is unwilling to agree to any mechanism which requires it to account and report to any City entity, with all of the inherent additional costs and potential for disagreement which such an arrangement implies.

CPWD's Proposed Solution:

CPWD's proposal in response to Suggestion #5 therefore is as follows:

1. Given that the current rates for the 242 spaces at the Lot are \$100/month, CPWD would agree to a cap of \$130/month for the tandem spaces which are leased on a month-to-month basis. This cap will assure CPWD that it will not lose money by providing tandem parking and would remain in place until prevailing market rates exceed \$130, at which time CPWD would be allowed to increase the rate of the spaces to match the market rate.

2. The above stated cap will remain in place through 2016 for all users of tandem spaces at the Warner surface lot on a month-to-month basis. As you know, however, and as contemplated in the Covenants, CPWD has obtained entitlements for and very much wishes to move forward with development of a mixed-use project at the site which will include provisions for publicly available parking long term. In order to get that project financed, however, we anticipate that our lenders will need to see long term leases and financial commitments from those HTPOs seeking long term parking at the new structure. Nothing in our agreement on the above stated cap should be construed as prohibiting CPWD from executing long term leases with HTPO users of the tandem spaces at the lot who voluntarily wish to enter such an arrangement with lease terms which call for higher monthly payments than contemplated under the cap when the new parking structure is ultimately delivered.

Closing Thoughts

Approving tandem at the Warner Lot will not have any cost impact to the City and will serve to provide direct and needed help to HTPOs who need parking. We thank the staff for its initial recommendation for approval of our request and hope you will see fit to accept the modified provisions we have suggested here. For your convenience, we will forward you a simple amendment to the Covenants which would allow CPWD to proceed under the conditions set forth above.

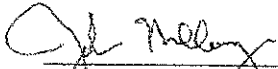
CPWD and Samitaur also wish to extend their support for the various other efforts currently being undertaken by the City and Agency staff to improve the parking situation in the Hayden Tract. These include the idea of the City overseeing and funding a parking district to allow for parking on the entirety of the railroad easement between Hayden and Eastham (so long as the costs of the parking district are paid for by the City or its users and is not an area wide assessment and that revenues from the district are used for its benefit only and not to finance parking elsewhere in the City). We are also aware of and encourage City/Agency financial participation in an alternate parking structure proposal south of Higuera should that project be approved. Every parking space CPWD does not have to provide for someone else is good news to CPWD.

CPWD would be remiss if it did not point out that which is obvious to all HTPOs and our residential neighbors: **the lack of parking in the Hayden Tract creates fire, safety, and neighborhood impact issues.** People park illegally and drive up and down neighborhood streets looking for parking. Tandem parking at Warner and the National and Hayden site will help relieve these fire, safety and neighborhood impact issues. Tandem parking will also defer or avoid the need for reallocation and provide a direct economic benefit to all HTPOs.

Finally, as we have previously proposed, we also remain ready to cooperate with the City in creating permanent long term parking available to all HTPOs at Warner, at no cash outlay to the City. Additionally, also pursuant to previous offers we have made to City and Agency staff, we could provide even more public parking immediately if granted a license to use the portion of the railroad easement next to our property. These, however, are potential subjects of future discussion should the Council so direct and they do not bear in any way on our current tandem request. Should you wish to re-engage discussion on these additional topics, please let us know.

Regardless of which, if any, of the responses to your modified recommendations we have outlined herein you elect to accept, we respectfully request that this communication and CPWD's proposed Amendment to the Covenants be attached to the Staff's Recommendation to the Council so that this simple matter may be brought into proper focus for the Council's consideration.

Respectfully submitted:


John Molloy, Project Manager

cc. Sol Blumenfeld

**ATTACHMENT 4
APPLICANT'S DRAFT COVENANT**

OFFICIAL BUSINESS

Document entitled to free
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Code Section 6103 and 27383

Recording Requested by
And When Recorded Return to:
CITY OF CULVER CITY
9770 Culver Boulevard
Culver City, California 90232
Attention: Asst. Executive Director

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**FIRST AMENDMENT OF PUBLIC PARKING COVENANTS
AFFECTING REAL PROPERTY**

THIS FIRST AMENDMENT OF PUBLIC PARKING COVENANTS

AFFECTING REAL PROPERTY (“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 “Conjunctive Points”).

RECITALS

A. City and Conjunctive Points 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 April 22, 2008 (collectively the “Purchase Agreement”), incorporated herein by this reference, wherein City conveyed to and Conjunctive Points acquired, subject to the Public Parking Covenants, that certain real

ATTACHMENT 4
APPLICANT'S DRAFT COVENANT

property legally described in the “Legal Description” attached hereto as Exhibit “A” and incorporated herein by this reference (the “Property”).

B. Pursuant to the Purchase Agreement, City and Conjunctive Points entered into that certain Public Parking Covenants Affecting Real Property which was 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 (the “Official Records”), as clarified by that certain Clarification of Public Parking Covenants recorded on December 17, 2008 in the Official Records as Document No. 2008-2212286 (collectively the “Public Parking Covenants”), incorporated herein by this reference. Any capitalized term not defined herein shall have the meaning ascribed to such term in the Public Parking Covenants.

C. On March 11, 2009, Conjunctive Points filed for an Administrative Use Permit (“AUP”) with the Culver City Planning Division for authority to tandem park on the Property which would allow for an additional 56 parking spaces at the Property. The AUP included a management and operation plan. City claimed that the Public Parking Covenants do not currently allow for tandem parking and require an amendment to the Public Parking Covenants to allow tandem parking. Although Conjunctive Points disagrees, Conjunctive Points and City both believe it to be in their respective best interests and the best interests of the owners and tenants of the Hayden Tract community to amend the Public Parking Covenants to allow for tandem parking on the Property, subject to and in accordance with all terms and conditions of this Amendment.

ATTACHMENT 4
APPLICANT'S DRAFT COVENANT

AMENDMENT OF THE PUBLIC PARKING COVENANTS

NOW, THEREFORE, City and Conjunctive Points hereby amend the Public Parking Covenants as follows:

1. Tandem Parking. Section 1.a of the Public Parking Covenants shall be amended to add the following Subparagraph:

“(15) During the Term of these Public Parking Covenants and thereafter, Buyer shall have the right to implement tandem parking on the existing surface parking lot currently located on the Property subject to a specific management and operation plan first approved in writing by the Agency Assistant Executive Director.

The use of tandem parking will result in 56 additional parking spaces on the Property in excess of the two hundred forty-two (242) Public Parking Spaces (the “Tandem Parking Spaces”). All costs associated with installing, implementing, maintaining and operating the tandem parking and the Tandem Parking Spaces shall be paid solely by Buyer. The rental rate for the Tandem Parking Spaces shall be determined by Buyer but not greater than one hundred thirty thousand dollars (\$130,000) per space subject to increase to match the fair market Parking Rate requirements of Paragraph 1.a(8), above, except and unless: (1) a different rental rate for

ATTACHMENT 4 APPLICANT'S DRAFT COVENANT

Tandem Parking Spaces is first approved in writing by the Agency Assistant Executive Director; (2) the expiration of the Term of these Public Parking Covenants; or (3) one or more Public Users sign a parking lease for one or more of the Tandem Parking Spaces with a term which exceeds the Term of the Public Parking Covenants.

The use of tandem parking and the Tandem Parking Spaces shall not increase Buyer's obligation to provide two hundred forty two (242) Public Parking Spaces required in the Public Parking Covenants. The Tandem Parking Spaces shall be allocated to all Public Users (including for definitional purposes of these Public Parking Covenants affiliates of Buyer and affiliates of Samitaur Constructs) expressing a need for parking in the Hayden Tract. The allocation of the Tandem Parking Spaces shall be made by Buyer in a "fair, equitable, reasonable and balanced basis" which shall mean for purposes of these Public Parking Covenants a pro rata allocation based upon the land square footage of each Public User who has expressed a need for parking in the Hayden Tract. The allocation formula shall include a numerator of the allocation fraction which shall be the land square footage of the property of the Public User who has expressed a need for parking in the Hayden Tract and the denominator shall be the land square footage of the property of all Public Users expressing a need for parking in the Hayden Tract.

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Buyer's right, subject to the terms and conditions herein, to implement and operate tandem parking and Tandem Parking Spaces granted in this paragraph (15) applies solely to the implementation and operation of tandem parking and the Tandem Parking Spaces on the existing surface parking lot currently located on the Property and does not include, extend or apply to a Parking Structure (as defined herein) or that certain railroad easement owned by the City abutting the Property."

2. This Amendment does not modify or alter how the parking rate paid to Buyer by the Public Users and the Willow Community School for the use of the 242 Public Parking Spaces is to be determined under the Public Parking Covenants. The term "Property" as used in the Public Parking Covenants does not include any portion of that certain railroad easement owned by the City abutting the Property. This Amendment does not in any way grant Conjunctive Points permission, authority or right to access, use or occupy any portion of that certain railroad easement owed by the City abutting the Property.

3. This Amendment does not (i) grant or guarantee any entitlement to any additional parking spaces to Public Users or the Willow Community School beyond the 242 total parking spaces allocable to the Public Users and the Willows Community School as set forth in the Public Parking covenants, except as set forth herein, (ii) grant Conjunctive Points permission, authority or right to access, use or occupy any portion of that certain railroad easement owned by the City abutting the Property at any time, (iii)

ATTACHMENT 4
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grant Conjunctive Points permission, authority or right to implement tandem parking at any Substituted Parking location or a Parking Structure, or (iv) amend any City laws, codes or rules relating to the allocation or use of parking spaces.

4. Should a conflict arise between this Amendment and the Public Parking Covenants, the provisions of this Amendment shall prevail.

5. Except as expressly provided otherwise in this Amendment, the Public Parking Covenants remain 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 or Conjunctive Points thereunder.

6. This Amendment shall become effective upon its execution by the City Manager or designee.

[remainder of page intentionally blank]

[signatures continued on the following page]

ATTACHMENT 4
APPLICANT'S DRAFT COVENANT

IN WITNESS WHEREOF, City and Conjunctive Points have signed this Amendment as of the
dates set opposite their signatures.

“City”
CITY OF CULVER CITY

Dated: _____, 2010

By: _____
Lamont Ewell
City Manager

APPROVED AS TO FORM

APPROVED AS TO CONTENT

By: _____
Carol A. Schwab
City Attorney

By: _____
Sol Blumenfeld
Community Development Director

KANE, BALLMER & BERKMAN
Special Counsel

By: _____
Murray O. Kane

“Conjunctive Points”

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

Dated: _____, 2010

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

State of California)
County of _____)

ATTACHMENT 4
APPLICANT'S DRAFT COVENANT

On _____ before me, _____, a
Notary Public, personally appeared _____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)
County of _____)

On _____ before me, _____, a
Notary Public, personally appeared _____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)
County of _____)

ATTACHMENT 4
APPLICANT'S DRAFT COVENANT

On _____ before me, _____, a
Notary Public, personally appeared _____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____ (Seal)

State of California)
County of _____)

On _____ before me, _____, a Notary Public, personally appeared _____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____ (Seal)

**ATTACHMENT 4
APPLICANT'S DRAFT COVENANT**

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

ATTACHMENT 5

Dear Honorable Mayor and City Council Members:

We are writing this letter for the purpose of advising you of our concerns in reference to the request by Conjunctive Points Warner Development, LLC ("CPWD") regarding "tandem parking" at the Warner Lot. We understand this request is to be heard in both open and closed sessions of council.

Whereas the request and plan appears simple, in fact, it is quite complex. It attempts to combine different issues into one request that if approved as proposed will harm many property owners in the Hayden Tract.

The concept of tandem parking at the Warner Lot might be something we can support, however, giving our full support would require understanding and hopefully offering input toward the modifications of the existing covenant.

Our main concern is the manner in which the application discusses permission for tandem parking beyond their property and to include the city owned "former railroad easement". We are opposed to this concept and the linking of permission to include anything but their own property.

Currently all of the property owners on the spur (former rail easement) between Hayden Avenue and Eastham Avenue are in discussions with the Community Development Agency for purposes of developing a "Co-op Parking District" that would greatly assist with some of the parking demands in the area while utilizing our own properties.

The sale or lease of the city's portion of the spur to "CPWD" will interfere with our efforts and intentions as well as strengthen "CPWD's" monopoly of parking in the area.

We request that you separate the "CPWD" request and not allow the proposal to be combined into one.

We also request that you postpone any consideration for tandem parking on the city owned spur property until there is a determination of how that property will be utilized.

Many of you know there is a long history with the "CPWD", Warner Lot, its adjacent Hayden Tract properties and owners. As we are aware of this history we would imagine that the questionnaire that "CPWD" circulated to the Hayden Tract could be portrayed by them in a manner that ultimately could hurt us.

We ask you to please be transparent and equitable and make the best deal for the greater good of the area, its property owners and the City.

Sincerely,

Michael Wellman - 3578 Hayden Avenue
David Freitag - 3623 Eastham and 8439 Warner Avenue

ATTACHMENT 5

Bobby Perez -	8468 Warner Avenue
Jim Jacobsen -	8500 Steller Drive and 8440 Warner Drive
George Schlatter -	8476 Steller Drive
Tom Walsmith -	8454 Steller Drive
Greg Toomey -	8432 Steller Drive