

**AMENDMENT TO UNDERTAKING AGREEMENT**

**(DEVELOPMENT IMPROVEMENTS)**

**C.U.P. NO. 07-06**

**PROJECT NAME: Crosspoint Development, LLC**

**THIS AMENDMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the City of Lancaster, (the "City") and Crosspoint Development, LLC, (the Developer").

**RECITALS**

**A.** The City approved Conditional Use Permit No. 07-06 on April 21, 2008, (the "C.U.P."), subject to certain conditions of approval set forth in Resolution No. 08-08, which conditions include construction of certain public improvements as set forth hereinbelow.

**B.** The City and Developer entered into that certain Undertaking Agreement dated November 17, 2009 ("Agreement").

**C.** The Agreement requires Developer to complete all Work required thereunder on or before November 17, 2010 ("Completion Date").

**D.** Developer desires to extend the Completion Date.

**E.** This Agreement is executed pursuant to the provisions of the Subdivision Map Act of the State of California and applicable City ordinances.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained and of the approval of the Map and of the acceptance of the dedications therein offered, and in order to insure satisfactory performance by the Developer of Developer's obligations under said Subdivision Map Act and said ordinance, the parties agree as follows:

**1. Performance of Work.**

Section 1 of the Agreement is amended and restated (in bold) to read as follows:

"Developer, at its sole cost and expense, will improve the Southwest Corner of Avenue H and 10th Street West, Lancaster, California by the grading and paving of streets, construction of curbs and gutters, and sidewalks, installation of drainage and sanitary sewerage facilities, provision of an underground utility and street lighting system, installation of street signs, a water system and all related facilities, and such other improvements required by the ordinances of the City and the resolution or resolutions of the Planning Commission and the City Council adopted in conjunction with the approval of the Project, together with appurtenances, contingencies and engineering costs and as more particularly shown in the improvement plans for contingencies and engineering costs and as more particularly shown in the improvement plans for said Project as well as all improvements identified in the "Attachment to PC Resolution No. 08-08, Conditional Use Permit No. 07-06 Conditions List (Revised)" dated April 21, 2008, (the "Improvements"). Developer will do all work and furnish all materials necessary, in the opinion of the City Engineer, to complete said

Improvements in accordance with the plans and specifications on file in the office of the City Engineer or with any changes or modifications required or ordered by the City Engineer which, in his opinion, are necessary or required to complete the Improvements. Developer shall maintain the Improvements and adjacent public facilities clear of all debris, weeds, and other materials which inhibit the performance of the Improvements or become a public nuisance. Should the Developer fail to act promptly in accordance with this requirement the City may, at its option, perform the necessary work and the Developer shall pay to the City the actual cost of such maintenance plus fifteen (15) percent.

**2. Extension of Term.**

Section 17 of the Agreement is amended and restated to provide as follows:

“Developer shall complete all of said Work on or before \_\_\_\_\_, or within such further time as may be granted by the City Council.”

**3. Agreement Remains in Effect.**

Except as expressly revised herein, the terms, conditions and requirements set forth in the Agreement shall remain in full force and effect. Any terms not defined in this Amendment shall have the meaning set forth in the Agreement.

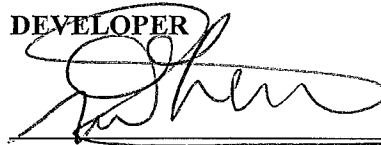
**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

**APPROVED:**

**CITY OF LANCASTER**

\_\_\_\_\_  
By: City Engineer

**DEVELOPER**



\_\_\_\_\_  
(Signature)

Managing Partner

(Office Held)

Crosspoint Development, LLC

Partnership or Corporation represented, if applicable

**APPROVED AS TO FORM:**

\_\_\_\_\_  
By: City Attorney

**ALL SIGNATURES MUST BE ACKNOWLEDGED BY NOTARY**

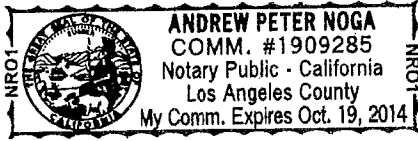
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of LOS ANGELES

On FEB 2, 2011 before me, ANDREW PETER NOGA, NOTARY PUBLIC  
Date Here Insert Name and Title of the Officer

personally appeared MENASHI COHEN  
Name(s) of Signer(s)



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 Andrew Peter Noga  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

**ILLEGIBLE NOTARY SEAL DECLARATION**

**GOVERNMENT CODE 27361.7**

I certify under penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary \_\_\_\_\_

Date Commission Expires \_\_\_\_\_

Notary Identification Number \_\_\_\_\_  
(For notaries commissioned after 1/01/1992)

Manufacturer/Vendor Identification Number \_\_\_\_\_  
(For notaries commissioned after 1/01/1992)

Place of execution of this Declaration \_\_\_\_\_

Date \_\_\_\_\_  
Signature \_\_\_\_\_

DESCRIPTION OF THE ATTACHED DOCUMENT
<u>AMENDMENT TO UNDERTAKING</u> <small>(Title or description of attached document)</small>
<u>AGREEMENT, C.U.P. 07-06</u> <small>(Title or description of attached document continued)</small>
Number of Pages <u>2</u> Document Date _____
_____ <small>(Additional information)</small>

CAPACITY CLAIMED BY THE SIGNER
<input type="checkbox"/> Individual (s)
<input type="checkbox"/> Corporate Officer
_____ <small>(Title)</small>
<input type="checkbox"/> Partner(s)
<input type="checkbox"/> Attorney-in-Fact
<input type="checkbox"/> Trustee(s)
<input type="checkbox"/> Other _____

**RESOLUTION NO. 08-08**

**A RESOLUTION OF THE PLANNING COMMISSION OF  
THE CITY OF LANCASTER, CALIFORNIA, APPROVING  
CONDITIONAL USE PERMIT NO. 07-06**

WHEREAS, a conditional use permit has been requested by CrossPoint Development, LLC, to construct a 19,028 square feet commercial retail center in the CPD Zone on 2.5± gross acres of land on the southwest corner of Avenue H and 10<sup>th</sup> Street West, as shown on the attached site map; and

WHEREAS, an application for the above-described conditional use permit has been filed pursuant to the regulations contained in Article I of chapter 17.32 of the Lancaster Municipal Code; and

WHEREAS, a notice of intention to consider the granting of a Conditional Use Permit has been given as required in Article V of Chapter 17.32 of the Lancaster Municipal Code and in Section 65905 of the Government Code of the State of California; and

WHEREAS, staff has performed necessary investigations, prepared a written report, and recommended approval of this conditional use application, subject to conditions; and

WHEREAS, public notice was provided as required by law and a public hearing was held on April 21, 2008; and

WHEREAS, the initial study was performed for this project in accordance with the requirements of CEQA; and

WHEREAS, this Commission hereby finds that the Initial Study determined that the proposed project could have a significant effect on the environment; however, there will not be a significant effect in this case with the implementation of mitigation measures as detailed in Exhibit "A"; and

WHEREAS, this Commission hereby finds, pursuant to Section 21082.1 of the Public Resources Code, that the mitigated Negative Declaration prepared for the proposed project reflects the independent judgment of the City of Lancaster; and

WHEREAS, this Commission hereby certifies that it has reviewed and considered the information contained in the mitigated Negative Declaration prepared for the proposed project in compliance with the California Environmental Quality Act and the State Guidelines for the Implementation of the California Environmental Quality Act prior to taking action; and

WHEREAS, this Commission hereby adopts the following findings in support of approval of this application:

1. The proposed 19,028 square foot commercial/retail center will be in conformance with the General Plan land use designation of CPD (Commercial Planned Development) for the subject property, and with the following various goals, objectives, policies, and specific actions of the General Plan:

Policy 19.5.5. (d). "Through the development review process, ensure that all exterior wall elevations of building and screen walls have architectural treatments that enhance the appearance of the building or wall.

- 1) Uniform materials and consistent style should be evident within a development project in all exterior elevations.
- 2) Secondary accent materials and colors should be used to highlight building features and provide visual interest."

2. The requested use at the location proposed will not:

a. Adversely affect the health, peace, comfort, or welfare of persons residing or working in the surrounding area, because the project will buffer the residential use to the south with a 10 foot-wide landscape planter and a block wall, and the hours of operation for the car wash facility would be limited to between 8:00 a.m. and 6:00 p.m. daily.

b. Be materially detrimental to the use, enjoyment, or valuation of property of other persons located in the vicinity of the site, because City development standards will be met, and adequate parking and landscaping will be provided. The proposed buildings are of a height compatible with the height limits of the commercial zones and are designed with adequate setbacks from the adjacent street.

c. Jeopardize, endanger or otherwise constitute a menace to the public health, safety, or general welfare, because adequate sewer, water, drainage, and improvements will be part of the project.

3. The proposed 2.5± gross acres is adequate in size and shape to accommodate the building setback, 73 parking spaces, and landscaping, and other development features prescribed in the Zoning Ordinance or as is otherwise required in order to integrate said use with the uses in the surrounding areas.

4. The proposed site is adequately served:

a. By Avenue H and 10<sup>th</sup> Street West, which will be of sufficient width and improved as necessary to carry the anticipated 3,027 daily vehicle trips such use would generate; and

b. By other public or private service facilities, including sewer, water, fire, and police services are required.

5. The proposed use will not result in a significant effect on the environment because all potential impacts have been found to not be significant or can be mitigated as noted in the environmental review section of the staff report prepared for this project.
6. There is a need for the proposed commercial project to serve the immediately adjacent area because the project can serve the area with commercial retail uses and the proposed uses would provide a wide range of goods and services currently not available in this area.

NOW, THEREFORE, BE IT RESOLVED:

1. This Commission hereby approves the mitigated Negative Declaration prepared for this project with the finding although that the proposed Conditional Use Permit could have a significant effect on the environment, there will not be a significant effect on the environment after mitigation measures have been applied to the project.
2. This Commission hereby adopts the Mitigation Monitoring Program, Exhibit "A".
3. This Commission hereby approves Conditional Use Permit No. 07-06, subject to the conditions attached hereto and incorporated herein.

PASSED, APPROVED and ADOPTED this 21<sup>st</sup> day of April 2008, by the following vote:

AYES: Commissioners Faux, MacPherson and Salazar


NOES: None.

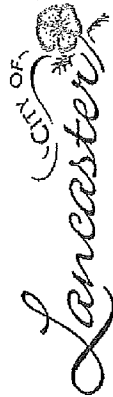
ABSTAIN: None.

ABSENT: Chairman Mann and Vice Chairman Troth

  
\_\_\_\_\_  
BRUCE MACPHERSON, Chairman Pro Tem  
Lancaster Planning Commission

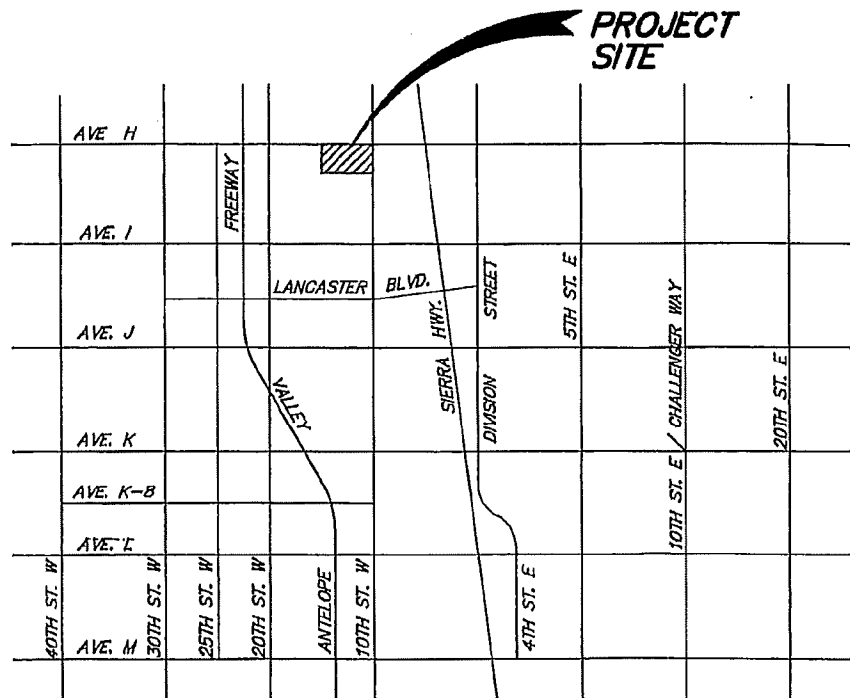
ATTEST:

  
\_\_\_\_\_  
BRIAN S. LUDICKE, Planning Director  
City of Lancaster



**MITIGATION MONITORING PLAN (Exhibit A)  
Conditional Use Permit No. 07-06**

Mit. / Cond. No.	Mitigation Measure/ Conditions of Approval	Monitoring Milestone (Frequency)	Method of Verification	Party Responsible for Monitoring	VERIFICATION OF COMPLIANCE	
					Initials	Date
BIOLOGICAL RESOURCES						
1.	The applicant shall be required to pay a total of \$6,012.50 to be held in trust by the City of Lancaster for the purchase of mitigation lands for the alkali mariposa lily. Payment of these fees is required prior to issuance of any permits (e.g., grading) for the proposed project.	Prior to vegetation removal, grubbing, grading, stockpiling, or construction, the applicant shall submit the appropriate fee.	Prior to final approval of grading plan or issuance of a stockpile permit or any ground disturbing activities.	Planning Department responsible for receiving fee.		
2.	A nesting bird survey shall be conducted within 30 days prior to the start of construction/ground disturbing activities. If nesting birds are encountered, all work in the area shall cease until either the young birds have fledged or the appropriate permits are obtained from the California Department of Fish and Game.	Prior to vegetation removal, grubbing, grading, stockpile, or construction the City must receive a report from a biologist advising site free from nesting birds.	Prior to final approval of grading plan, issuance of a stockpile permit or any ground disturbing activities.	Planning Department responsible for reviewing report.		
3.	A burrowing owl survey shall be conducted within 30 days prior to the start of construction/ground disturbing activities. If burrowing owls or sign thereof are discovered during the survey, the applicant shall contact the California Department of Fish and Game to determine the appropriate mitigation/management requirements for the species.	Prior to vegetation removal, grubbing, grading, stockpile, or construction the City must receive a report from a biologist advising site free from burrowing owls.	Prior to final approval of grading plan, issuance of a stockpile permit or any ground disturbing activities.	Planning Department responsible for reviewing report.		



CUP 07-06  
VICINITY MAP