

EXCLUSIVE NEGOTIATING AGREEMENT

This Exclusive Negotiating Agreement (this "Agreement"), dated for reference purposes only as of August 14, 2009, is by and between the City of Oakland, a municipal corporation (the "City"), acting by and through its Board of Port Commissioners (the "Port"), and AMB Property, L.P., a Delaware limited partnership ("AMB") and California Capital Group, a California general partnership ("CCG") and their successor in interest (collectively, the "Developer").

This Agreement is made with reference to the following facts and circumstances:

A. The Port owns or controls a portion of the former Oakland Army Base ("OAB") and other lands that comprise approximately 168 acres (the "Property") as further described in that certain Oakland Army Base Request for Qualifications dated May 8, 2009, issued by the Port (the "RfQ").

B. AMB and CCG intend to form a limited liability company to be managed by AMB as the managing member. At such time as such limited liability company is formed, AMB and CCG will assign their rights and obligations hereunder to such limited liability company.

C. The parties hereto desire to enter into further negotiations relating to the master operation and maintenance, and the design, construction, finance, and lease of the facilities on the Property (the "Project") to determine and finalize the terms of an Option Agreement (the "Option Agreement") to enter into a Master Lease Agreement (the "Master Lease Agreement").

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Developer and the Port hereby agree as follows:

1. Effective Date and Term. This Agreement shall become effective on the later of (a) the date on which the Board of Port Commissioners adopts a resolution approving and authorizing this Agreement, (b) the date on which the parties hereto have duly executed and delivered this Agreement and (c) the date on which the Port Attorney's Office approves the form and legality of this Agreement (the "Effective Date"). The term of this Agreement shall commence on the Effective Date and expire on the earlier of (i) 180 days from the Effective Date, (ii) February 1, 2010, unless extended by mutual agreement of the parties or earlier terminated as permitted under this Agreement, and (iii) the effective date of the Option Agreement (the "Term"). Notwithstanding the foregoing, any party may terminate this Agreement without liability to any other party by delivering thirty (30) days' prior written notice to the other party. In connection with each party's right to terminate under this Section 1, as to Developer, such right to terminate may be exercised, if at all, only by AMB.

2. Negotiations. During the Term, the Port will negotiate exclusively with the Developer and in good faith for the purpose of developing objectives and goals of both the Port and Developer for the future development of the Property. The Port and Developer each acknowledge that there were certain differences between the Port's RfQ and the Developer's submittal in response thereto, and the parties agree to negotiate in good faith to resolve such

differences. Furthermore, the Developer intends to work collaboratively with the Port to create a development plan that (i) addresses and takes advantage of any local, State, federal and private investments to improve the local, regional, or statewide economy, environment, and employment through a public-private partnership, and (ii) incorporates the development plan elements of the Port's previously proposed site development in areas owned by the Port, including projects that may qualify for funding by the State of California through its Trade Corridor Improvement Fund program and other funding mechanisms which Developer and Port may agree to use. In addition, the parties mutually agree to cooperate with the City, the State of California, and the federal governments in seeking additional development funding through other State and federal programs, including the American Recovery and Reinvestment Act of 2009 and the anticipated surface transportation reauthorization legislation. During the Term, the parties will discuss and negotiate such other issues relating to the proposed transaction as may be identified by either party hereto, with the objective of documenting their mutual understanding and agreements with respect to all such issues in the Option Agreement and form Master Lease Agreement.

The parties agree to negotiate the Option Agreement in good faith on or before the expiration of the Term, and each agrees to negotiate in good faith and to dedicate to the negotiations a sufficient amount of staff (including legal services) time and attention, including the time and attention of staff designated with decision making authority in this matter, as necessary, during the Term. Drafts of the Option Agreement and Master Lease Agreement in word versions will be transmitted from the Port to the Developer within 10 days of the Effective Date in order to expedite and facilitate the negotiations of the terms thereof during the Term. The Developer agrees to provide the Port with its initial comments (in electronic redline and clean forms) to such forms of Option Agreement and Master Lease Agreement on or before 5:00 p.m., November 16, 2009. If the parties are unable to agree upon the final forms of the Option Agreement and the Master Lease Agreement by the expiration of the Term, this Agreement shall terminate, unless otherwise extended by mutual agreement. In the event this Agreement is terminated as of the end of the term or if either party terminates the Agreement early, the Port and the Developer shall have no further obligation to negotiate exclusively with each other for the future development of the Property.

3. Port Acting as Owner of Real Property. The Developer acknowledges that the Port is acting in its capacity as a property owner with a proprietary interest in the Property and not as a regulatory agency with police powers. Nothing in this Agreement shall limit in any way the Developer's obligation to obtain any regulatory approvals from any governmental agency having jurisdiction over the Property or the operations proposed to be conducted thereon.

4. Agreements Subject to Environmental Review and Governmental Approvals. By entering into this Agreement, the Port is not committing itself or agreeing to undertake any definite course of action. The terms of this Agreement do not commit the Port to undertake (a) any conduct to dispose of or grant control over the Property to Developer, or (b) any other acts or activities predetermining, affecting, or influencing the subsequent independent exercise of discretion related to the transactions contemplated hereunder by the Port or by any other governmental agency or authority. The Developer acknowledges that the Port cannot enter into or be bound by any documents or agreements that will cause or result in

any future work by the Developer on the Property (including the Option Agreement and Master Lease Agreement) or a grant of any rights with respect to any development of the Property until all environmental reviews required by CEQA or NEPA, or any other necessary regulatory approvals, are completed.

5. Governing Law. This Agreement shall be deemed to be made in and shall be construed in accordance with the laws of the State of California.

6. Relationship of the Parties. Developer is and shall at all times be and remain independent from the Port and shall not be an agent of the Port. Nothing herein contained shall be construed to place the parties in the relationship of partners or joint ventures. Neither party shall have any right or power to obligate or bind any other party in any manner whatsoever except as expressly authorized in this Agreement. This Agreement is not intended, nor shall it be construed, to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The Port is not a fiduciary and has no special responsibilities beyond any obligations expressly set forth herein to Developer.

7. Attorneys' Fees. In the event of a default under this Agreement or in the event a dispute arises in a judicial or quasi-judicial proceeding concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its or their rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Agreement, reasonable fees of attorneys of the Port Attorney's Office shall be based on the fees the Port Attorney pays its outside private attorneys who work on any such dispute. The provisions under this Section 7 shall survive the Term.

8. Indemnity. Developer shall indemnify, protect, defend and hold harmless the Port and the Port's officers, agents and employees, from and against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs through appeal ("Losses"), arising out of or related to exclusively personal injury and property damage related to Developers activities on the Property, or its agents, employees or contractors, under this Agreement, except to the extent such Losses are caused by the negligence or willful misconduct of Port. The provisions under this Section 8 shall survive the Term.

9. Notices. Unless otherwise expressly provided herein, any notice given under this Agreement shall be effective only if in writing and given by delivering the notice in person or by sending it first-class mail or certified mail with a return receipt requested or by Express Mail, return receipt requested, with postage prepaid, or via facsimile, as follows:

If to the Port: Omar Benjamin
Executive Director
Port of Oakland
530 Water Street
Oakland, CA 94607

with copies to: James Kwon
Director of Maritime
Port of Oakland
530 Water Street
Oakland, CA 94607

Donnell Choy
Deputy Port Attorney
Port of Oakland
530 Water Street
Oakland, CA 94607

If to Developer: AMB Property Corporation c/o Dan Letter
1360 Willow Road, Suite 100
Menlo Park, CA 94025

with a copy to: California Capital Group c/o Phil Tagami
300 Frank Ogawa Plaza, Suite 340
Oakland, CA 94612

with a copy to: Jeff Trant
Law Office of Jeffrey A. Trant
P.O. Box 4026
Los Altos, CA 94023-4026

10. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

11. Transaction Costs. At all times during the Term, the parties agree that each party will be responsible for all of its own costs and the costs associated with any consultants of other members of its own team related to the negotiation and preparation of any and all transaction documents.


12. ENA Deposit. Within two (2) business days of the execution of this Agreement by the parties, the Port and Developer will deposit an executed counterpart of this Agreement with Chicago Title in San Francisco, California ("Escrow Holder"). This Agreement shall serve as instructions to the Escrow Holder for the consummation of the transaction contemplated hereunder, and the parties agree to execute such supplementary escrow instructions as may be appropriate to enable the Escrow Holder to comply with the terms of this Agreement. Concurrently with the deposit of this Agreement, AMB will on behalf of the Developer deliver to

Escrow Holder a deposit equal to \$100,000 (the "ENA Deposit"). The ENA Deposit shall be held in an interest bearing escrow account at Escrow Holder's offices in San Francisco, California. The ENA Deposit, along with any interest earned thereon, will be immediately returned to AMB upon expiration of the Term if the parties have not entered into the Option Agreement or upon earlier termination of this Agreement. If the Option Agreement is executed by both parties hereto prior to the end of the Term, then the ENA Deposit shall be part of the negotiated option consideration (as defined in the Option Agreement) (i.e., the amount of the Option Consideration shall be increased by \$100,000), and shall thereafter be considered part of the Option Consideration for all purposes.

13. Due Diligence Materials: The Port will cooperate reasonably with Developer in allowing Developer to inspect and copy, at no cost to the Port, such documents as Developer may request and which are in the possession of, and reasonably available to, the Port relating to the condition of the Property, including, but not limited to, the documents listed on the "List of Environmental Documents & Policies" which was attached to the RfQ, as said list may be updated by the Port from time-to-time, structural integrity of any improvements thereon, existing utility plans, civil engineering surveys, a current legal description of the Property, development studies, existing improvement plans, any third party agreements affecting use, operation or ownership of the Property, biological studies and all other information, reports and studies which affects the Property (the "Property Information"). Following the Effective Date, the parties may enter into a non-disclosure agreement in a form mutually satisfactory to the Port and Developer prior to the Port releasing any requested documents. With respect to the Property Information, Developer acknowledges that the Port makes no representation regarding the accuracy or completeness of such documents, and Developer is not relieved of any of its obligations hereunder or under applicable law as a result of such delivery of any such documents. Developer agrees that if it uses any such documents, Developer will assume all risk of any inaccuracies contained or reported in, and the lack of completeness of, such documents. Whether or not any such documents are available to Developer, Developer shall be responsible for undertaking any studies or reports necessary to develop the Property in accordance with a Project to be agreed upon pursuant to the terms and conditions of the Option Agreement and Master Lease Agreement.

14. Right of Entry: Upon request, the Port will grant Developer the right to enter on the Property during normal business hours for the purpose of performing non-invasive, visual investigations of the Property to assess the feasibility of developing the Property. If Developer wishes to conduct any physical studies of the Property, including invasive investigations regarding environmental conditions, soil condition or physical building inspections, Developer shall submit a detailed written proposed scope of work ("Proposed Work Plan") for the Port's review and approval in the Port's proprietary capacity as the owner of the Property. The Port, acting in its proprietary capacity, shall have the right to grant, deny, or condition such Proposed Work Plan in its sole discretion. It shall be reasonable for the Port to deny such Proposed Work Plan if the Proposed Work Plan requires the Port to incur any cost or expense other than the staff time of those Port staff directly involved in the exclusive negotiations under this Agreement. If the Port approves or conditionally approves such Proposed Work Plan, the Port will grant Developer a right of entry under a Right of Entry Agreement ("ROE Agreement") prepared and approved by the Port Attorney or his designee. If the Proposed Work Plan requires any permits or other governmental approvals (including, without

limitation, any Port permits), Developer shall work with the Port to obtain any such governmental approvals at no cost or expense to the Port. If the Proposed Work Plan requires any Port permits, the Port may (acting in its regulatory capacity) grant, deny, or condition such Port permits in its sole and absolute discretion. If an ROE Agreement is entered into, Developer shall provide copies of all reports and studies regarding the condition of the Property (including, without limitation, any improvements or subsurface conditions) prepared by, for, or on behalf of, the Developer as a result of such entry upon the Property.

  Developer's Initials

[Signatures on following page]

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 Developer's Initials

[Signatures on following page]

DEVELOPER:

**AMB PROPERTY, L.P., a Delaware
limited partnership,**

**By: AMB PROPERTY
CORPORATION, a Maryland
corporation,**

By: [Signature]
Its: Senior Vice President

By: [Signature]
Its: Vice President

Dated: August 20, 2009

**CALIFORNIA CAPITAL GROUP, a
California general partnership**

By: _____
Its: _____

Dated: _____

**CITY OF OAKLAND, A MUNICIPAL
CORPORATION, ACTING BY AND
THROUGH ITS BOARD OF PORT
COMMISSIONERS**

By: _____
Its: _____

Dated: _____

DEVELOPER:

**AMB PROPERTY, L.P., a Delaware
limited partnership,**

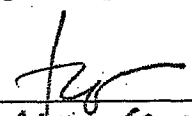
**By: AMB PROPERTY
CORPORATION, a Maryland
corporation,**

By: _____
Its: _____

By: _____
Its: _____

Dated: _____

**CALIFORNIA CAPITAL GROUP, a
California general partnership**

By: 
Its: MANAGING GENERAL PARTNER

Dated: 8/20/09

**CITY OF OAKLAND, A MUNICIPAL
CORPORATION, ACTING BY AND
THROUGH ITS BOARD OF PORT
COMMISSIONERS**

By: _____
Its: _____

Dated: _____

DEVELOPER:

**AMB PROPERTY, L.P., a Delaware
limited partnership,**

**By: AMB PROPERTY
CORPORATION, a Maryland
corporation,**

By: _____
Its: _____

By: _____
Its: _____

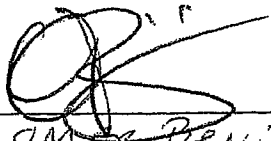
Dated: _____

**CALIFORNIA CAPITAL GROUP, a
California general partnership**

By: _____
Its: _____

Dated: _____

**CITY OF OAKLAND, A MUNICIPAL
CORPORATION, ACTING BY AND
THROUGH ITS BOARD OF PORT
COMMISSIONERS**

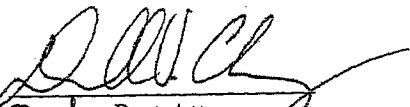
By:  _____
Its: Omar Benjamin

Dated: 8/24/09

**THIS AGREEMENT SHALL NOT
BE VALID OR EFFECTIVE FOR
ANY PURPOSE UNLESS AND
UNTIL IT IS SIGNED BY THE
PORT ATTORNEY OR HIS
DESIGNEE.**

Approved as to form and
legality this 24th day of
August, 2009

DAVID L. ALEXANDER,
Port Attorney

By: 
Deputy Port Attorney

Resolution Number: 09112

Adopted: July 21, 2009