

AGREEMENT TO NEGOTIATE EXCLUSIVELY

30891

THIS AGREEMENT is made and entered, in duplicate, as of 9/12/08,

2008 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on June 10, 2008, by and between BANCAP INVESTMENT GROUP, INC., a California corporation ("Developer") and the CITY OF LONG BEACH, a municipal corporation ("City").

1. NEGOTIATIONS. City and Developer agree (for the period stated below) to negotiate in good faith pursuant to the terms of this Agreement with respect to the development and operation of certain real property more particularly depicted in Exhibit "A" attached hereto (the "Property"). The terms and conditions of such development negotiated by City and Developer will be reflected in certain development agreements and/or a lease agreement to be executed between Developer and City (collectively, the "Development Agreements"). City agrees (for the period stated below) not to negotiate with any other person or entity regarding development of the Property without the consent of Developer. Nothing in this Agreement shall be deemed a covenant, promise or commitment by City, or any agency of City, with respect to the acquisition of the Property or the approval of development. City's acceptance of this Agreement is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by City as to any actions required of City.

2. NEGOTIATION PERIOD. City and Developer agree to negotiate for a period of one (1) year after the Execution Date of this Agreement in order to enter into the Development Agreements. For purposes hereof, the "Execution Date" of this Agreement shall be the date upon which the Agreement is fully executed by both parties. If, upon the expiration of such period of time, City and Developer have not each approved and executed the Development Agreements, then this Agreement shall automatically terminate and Developer shall have no further rights regarding the subject matter of this

1 Agreement or the Property, and City shall be free to negotiate with any other persons or
2 entities with regard to the Property; provided, however, that the City Manager and
3 Developer may mutually agree in writing to further extend the exclusive negotiation
4 period for an additional ninety (90) days. The Director of City's Community Development
5 Department shall negotiate the terms and conditions of the development of the Property
6 subject to the City Council's final approval, and said Director shall have authority to
7 extend the time periods for actions required to be taken by Developer under Section 4.

8 3. GOOD FAITH DEPOSIT. Prior to the execution of this Agreement
9 and as a condition to the effectiveness hereof, Developer shall deposit with the City Ten
10 Thousand Dollars (\$10,000) in immediately available funds (the "Good Faith Deposit").
11 The Good Faith Deposit shall be drawn upon by City to reimburse City for all costs and
12 expenses reasonably incurred by City in connection with the execution and administration
13 of this Agreement. Developer shall be obligated to reimburse City for all of the costs and
14 expenses incurred by City under this Agreement, including without limitation staff time,
15 surveyor fees, engineering fees, economic advisor fees and architect fees, regardless of
16 whether this Agreement is terminated, extended, or results in the execution of the
17 Development Agreements, and regardless of whether such costs and expenses exceed
18 the amount of the Good Faith Deposit. After receipt of the Good Faith Deposit, City shall
19 provide Developer with a monthly accounting of the fees and expenses incurred by City
20 and the corresponding deductions from the Good Faith Deposit. If this Agreement results
21 in the execution of the Development Agreements, then any remaining balance of the
22 Good Faith Deposit shall be applied towards rent or other fees due to City under the
23 Development Agreements. If this Agreement terminates by its own terms without the
24 execution of the Development Agreements, then the remaining balance of the Good Faith
25 Deposit shall be returned to Developer after the City processes all outstanding and final
26 invoices.

27 4. ONGOING OBLIGATIONS OF DEVELOPER.

28 4.1 Within ninety (90) days of the Execution Date, Developer shall

1 formulate a development plan, including conceptual drawings, and shall submit the same
2 to City for its approval. If Developer fails to deliver its development plan and supporting
3 documentation to City within said time period, this Agreement shall automatically
4 terminate, unless otherwise agreed by the parties hereto in writing. After submission of
5 said development plan to City, Developer shall thereafter use reasonable efforts to
6 submit updated drafts of supporting documentation to City in a timely manner.

7 4.2 Within one hundred twenty (120) days of the Execution Date,
8 Developer shall commission the preparation of an environmental review pursuant to the
9 California Environmental Quality Act by a consultant selected by City in its reasonable
10 discretion. If Developer fails to commission the preparation of an environmental review
11 within said time period, this Agreement shall automatically terminate, unless otherwise
12 agreed by the parties hereto in writing.

13 4.3 Within two hundred seventy (270) days of the Execution Date,
14 Developer shall provide City with evidence of a leasing commitment with a tenant and
15 upon terms that are reasonably acceptable to City. If Developer fails to deliver evidence
16 of an acceptable leasing commitment to City within said time period, this Agreement shall
17 automatically terminate, unless otherwise agreed by the parties hereto in writing.

18 4.4 Within three hundred fifteen (315) days of the Execution Date,
19 Developer shall provide City with evidence of a financing program reasonably acceptable
20 to City. If Developer fails to deliver evidence of an acceptable financing program to City
21 within said time period, this Agreement shall automatically terminate, unless otherwise
22 agreed by the parties hereto in writing.

23 4.5 Within three hundred thirty (330) days of the Execution Date,
24 Developer shall provide City with a draft ground lease to be executed by the prospective
25 tenant and a ground lease term sheet. If Developer fails to deliver the ground lease and
26 term sheet to City within said time period, this Agreement shall automatically terminate,
27 unless otherwise agreed by the parties hereto in writing. After submission of said ground
28 lease and term sheet to City, Developer shall thereafter use reasonable efforts to submit

1 updated drafts to City in a timely manner.

2 5. FEES. All fees and expenses associated with engineers, architects,
3 financial consultants, lawyers, planning consultants and all other consultants and
4 contractors retained by Developer, and all fees associated with environmental
5 consultants, permitting processes and CEQA review, including negative declarations or
6 EIRs, shall be the sole responsibility of Developer. Under no circumstances shall City be
7 obligated to pay or reimburse any costs or fees incurred by Developer in performance of
8 any obligations of Developer under this Agreement.

9 6. NOTICES. All notices given pursuant to the provisions hereof may
10 be served either by: (1) enclosing the same in a sealed envelope addressed to the party
11 intended to receive the same at the address indicated herein and deposited postage
12 prepaid, in the U.S. Postal Service as certified mail, return receipt requested, or (2)
13 personal service. Such notices shall be effective on the date personal service is effected
14 or the date of the signature on the return receipt. For the purposes hereof, the address of
15 City and the proper party to receive any such notices on its behalf is City of Long Beach
16 Project Development Bureau Manager, Community Development Department, 333 West
17 Ocean Boulevard, 3rd Floor, Long Beach, California 90802; and Developer's address for
18 service of any such notices shall be 192 Marina Drive, Long Beach, CA 90803.

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OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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THE PARTIES have executed this Agreement as of the date first written
above.

CITY OF LONG BEACH

By [Signature] Assistant City Manager
Patrick H. West
City Manager
EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

CITY

BANCAP INVESTMENT GROUP, INC.
a California corporation

By: [Signature]
Name: R Whitney Latimer
Title: CFB

By: _____
Name: _____
Title: _____

Tax ID #: [Redacted]

DEVELOPER

Approved as to form this 1 day of October, 2008.

ROBERT E. SHANNON, City Attorney of the City of Long Beach

By [Signature]
Deputy

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EXHIBIT "A"
[To be attached]

[illegible]

Proposed Location



SITE PLAN

A1.0

SHEET NUMBER

SITE PLAN

SHEET NAME

28133.00

BACIN T

WILLIAM J. RESENI

501

134

100

714-536-3661

100

JOHN HUNTINGTON

101

ARCHITECT

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NEWSPAPER: 12 MAY 1997

REMISION

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