

**SECURITIES AND EXCHANGE COMMISSION**

**WASHINGTON, D.C. 20549**

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**FORM 8-K**

**Current Report Pursuant to Section 13 or 15(d) of  
The Securities Exchange Act of 1934**

Date of Report (date of earliest event reported): December 9, 2004

**AMB PROPERTY CORPORATION**

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(Exact name of registrant as specified in its charter)

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| <u>Maryland</u><br>(State or other jurisdiction of<br>Incorporation) | <u>001-13545</u><br>(Commission File Number) | <u>94-3281941</u><br>(I.R.S. Employer<br>Identification Number) |
|--|--|---|

Pier 1, Bay 1, San Francisco, California 94111

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(Address of principal executive offices) (Zip Code)

415-394-9000

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(Registrants' telephone number, including area code)

n/a

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(former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**TABLE OF CONTENTS**

[ITEM 1.01. ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT](#)

[ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS](#)

[SIGNATURES](#)

[EXHIBIT INDEX](#)

[EXHIBIT 10.1](#)

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[Table of Contents](#)

**ITEM 1.01. ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT**

On December 9, 2004, our board of directors approved an amendment and restatement of the Change of Control and Noncompetition Agreements between AMB Property, L.P., our subsidiary of which we are general partner, and our executive officers.

The amendment and restatement of our Change of Control and Noncompetition Agreements, amends the former agreements, among other things, (a) to increase coverage periods of health and insurance benefits provided pursuant to the agreements upon certain terminations following a change of control event, (b) to provide gross-up payments of excise taxes with respect to certain severance payments made to our executive officers following a change of control event and (c) to provide for accelerated vesting of our executive officers' options, restricted stock and other awards based upon our equity securities upon a change of control event.

The form of Amended and Restated Change of Control and Noncompetition Agreement is filed as Exhibit 10.1 to this current report on Form 8-K and is incorporated herein by reference.

**ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS**

(c) Exhibits.

| <b>Exhibit<br/>Number</b> | <b>Description</b>   |
|---------------------------|--|
| 10.1                      | Form of Amended and Restated Change of Control and Noncompetition Agreement by and between AMB Property, L.P. and executive officers |

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

AMB Property Corporation  
(Registrant)

By: /s/ Tamra Browne

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Tamra Browne  
Senior Vice President, General Counsel and  
Secretary

Date: December 15, 2004

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EXHIBIT INDEX

| <b>Exhibit<br/>Number</b> | <b>Description</b>   |
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| 10.1                      | Form of Amended and Restated Change of Control and Noncompetition Agreement by and between AMB Property, L.P. and executive officers |

## AMENDED AND RESTATED

## CHANGE IN CONTROL AND NONCOMPETITION AGREEMENT

THIS AMENDED AND RESTATED CHANGE IN CONTROL AND NONCOMPETITION AGREEMENT (the "Agreement") is dated as of \_\_\_\_\_, between AMB Property, L.P., a Delaware limited partnership (the "Company"), and \_\_\_\_\_ (the "Executive"). This Agreement supersedes in its entirety that certain Change in Control and Noncompetition Agreement entered into between the Company and the Executive as of \_\_\_\_\_.

**1. TERM OF AGREEMENT**

This Agreement shall commence on the date hereof and will terminate on November 26, 2005; *provided, however*, that commencing on November 26, 2005, and each November 26 thereafter, the term of this Agreement shall be automatically extended for one additional year unless, not later than October 30 of the preceding year, the Company shall have given notice that it does not wish to extend this Agreement; *provided, further*, that if a Change in Control (as defined in Section 2) occurs during the original or extended term of this Agreement, this Agreement shall continue in effect until the later of November 26, 2005 and twenty-four (24) months after the date on which such Change in Control occurred (the "Change in Control Date").

**2. DEFINITIONS**

For purposes of this Agreement, the following terms shall have the following meanings:

"Cause" shall mean:

- (a) gross negligence or willful misconduct in the performance of the Executive's duties;
  - (b) the Executive's willful and continued failure to substantially perform the Executive's duties with the Company (other than a failure resulting from the Executive's incapacity due to physical or mental illness or any failure after the Executive's issuance of a Notice of Termination (as defined in Section 3.6)), after a written demand for substantial performance is delivered to the Executive by the Board of Directors (the "Board") of AMB Property Corporation, a Maryland corporation (the "General Partner");
  - (c) fraud or other conduct against the material best interests of the Company; or
  - (d) a conviction of a felony if such conviction has a material adverse effect on the Company.
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A "Change in Control" shall be deemed to occur if:

(a) the shareholders of the General Partner approve a plan of complete liquidation of the General Partner or an agreement for the sale or disposition by the General Partner of all or substantially all of the General Partner's assets, or the General Partner disposes of more than fifty percent (50%) of its interest in the Company;

(b) any Person (as defined below) is or becomes the Beneficial Owner (as defined below), directly or indirectly, of securities of the General Partner representing forty percent (40%) or more of the combined voting power of the General Partner's then outstanding securities. For purposes of this Agreement, (A) the term "Person" is used as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"); *provided, however*, that the term shall not include the General Partner, any trustee or other fiduciary holding securities under an employee benefit plan of the General Partner, and any corporation owned, directly or indirectly, by the shareholders of the General Partner, in substantially the same proportions as their ownership of stock of the General Partner, and (B) the term "Beneficial Owner" shall have the meaning given to such term in Rule 13d-3 under the Exchange Act;

(c) during any period of two (2) consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constitute the Board, and any new director (other than a director designated by a person who has entered into an agreement with the General Partner to effect a transaction described in clauses (a), (b) or (d)) whose election by the Board or nomination for election by the General Partner's shareholders was approved by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority thereof; or

(d) the shareholders of the General Partner approve a merger or consolidation of the General Partner with any other corporation (or other entity), other than (i) a merger or consolidation which would result in the voting securities of the General Partner outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than fifty percent (50%) of the combined voting power of the voting securities of the General Partner or such surviving entity outstanding immediately after such merger or consolidation or (ii) where more than fifty percent (50%) of the directors of the General Partner or the surviving entity after such merger or consolidation were directors of the General Partner immediately before such merger or consolidation.

“Date of Termination” shall mean:

- (a) if the Executive’s employment is terminated by his death, the date of his death;
- (b) if the Executive’s employment is terminated by reason of his Disability, the date of the opinion of the physician referred to in the definition of “Disability” hereof; or
- (c) if the Executive’s employment is terminated by the Company or by the Executive for any reason other than death or Disability, the date specified in the Notice of Termination;

provided, that, if within fifteen (15) days after any Notice of Termination (as defined in Section 3.6) is given, the party receiving such Notice of Termination notifies the other party that a dispute exists concerning the termination, then the Date of Termination shall be the date on which the dispute is finally resolved, either by mutual written agreement of the parties, or otherwise; *provided, however*, that the Date of Termination shall be extended by a notice of dispute only if such notice is given in good faith and the party giving such notice pursues the resolution of such dispute with reasonable diligence.

“Disability” shall mean the Executive’s physical or mental disability or infirmity which, in the opinion of a competent physician selected by the Board, renders the Executive unable to perform properly his duties as an employee of the Company, and as a result, the Executive is unable to perform such duties for six (6) consecutive calendar months or for shorter periods aggregating one hundred and eighty (180) business days in any twelve (12) month period, but only to the extent that such definition does not violate the Americans with Disabilities Act.

“Good Reason” shall mean, without the Executive’s express written consent, the occurrence after a Change in Control of any of the following circumstances unless such circumstances are fully corrected (provided such circumstances are capable of correction) prior to the Date of Termination as specified in the Notice of Termination:

- (a) the assignment to the Executive of any duties inconsistent with the position in the Company that the Executive held immediately prior to the Change in Control Date, a significant adverse alteration in the nature or status of the Executive’s responsibilities or the conditions of the Executive’s employment from those in effect immediately prior to the Change in Control Date, or any other action by the Company that results in a material diminution in the Executive’s position, authority, duties or responsibilities from those in effect immediately prior to the Change in Control Date;
- (b) a reduction in the Executive’s annual base compensation as in effect on the Change in Control Date;
- (c) the relocation of the Company’s offices at which the Executive is principally employed immediately prior to the Change in Control Date (the “Principal



Location”) to a location more than fifty (50) miles from such location or the Company’s requiring the Executive, without the Executive’s written consent, to be based anywhere other than the Principal Location, except for required travel on the Company’s business to an extent substantially consistent with the Executive’s business travel obligations prior to the Change in Control Date;

(d) the Company’s failure to pay to the Executive any portion of the Executive’s compensation or to pay to the Executive any portion of an installment of deferred compensation under any deferred compensation program of the Company within seven (7) days of the date such compensation is due; or

(e) the Company’s failure to continue in effect any material compensation or benefit plan or practice in which the Executive is eligible to participate in on the Change in Control Date (other than any equity based plan), unless an equitable arrangement (embodied in an ongoing substitute or alternative plan) has been made with respect to such plan, or the Company’s failure to continue the Executive’s participation therein (or in such substitute or alternative plan) on a basis not materially less favorable, both in terms of the amount of benefits provided and the level of the Executive’s participation relative to other participants, as existed at the time of the Change in Control Date;

*provided, however,* that the Executive’s continued employment shall not constitute consent to, or a waiver of rights with respect to, any circumstance constituting Good Reason hereunder.

### 3. COMPENSATION UPON TERMINATION

#### 3.1. Death.

Whether or not there is a Change in Control, if the Executive’s employment shall be terminated due to the Executive’s death, the Company shall pay monthly to the Executive’s estate for a period equal to one (1) year following the Date of Termination an amount equal to the sum of: (i) one-twelfth of the Executive’s annual base compensation as in effect on the Date of Termination plus (ii) one-twelfth of any bonus at the most recent annual amount received, or entitled to be received, by the Executive for the most recent annual period. At the Executive’s estate’s expense, the Executive’s spouse and children shall also be entitled to any continuation of health insurance coverage rights under any applicable law.

#### 3.2. Disability.

Whether or not there is a Change in Control, if the Executive’s employment shall be terminated by reason of Disability, the Company shall pay to the Executive a single payment in an amount equal to the sum of: (i) the Executive’s annual base compensation as in effect on the Date of Termination plus (ii) an amount equal to the annual bonus received, or entitled to be received, by the Executive for the most recent annual period. Such payment shall be in addition to any disability insurance payments to which the Executive is otherwise entitled. At the Executive’s own expense, the Executive and the Executive’s spouse and children shall also be entitled to any continuation of health insurance coverage rights under any applicable law.

3.3. Termination Upon Change in Control.

If during the term or extended term of this Agreement and within two (2) years following a Change in Control, the Executive's employment with the Company is terminated, in addition to his base compensation and any bonus then payable through the Date of Termination and, at the Executive's own expense, any continuation of health insurance coverage rights under any applicable law, the Executive shall be entitled to the benefits provided below, unless such termination is (i) because of the Executive's death, Disability or retirement, (ii) by the Company for Cause or (iii) by the Executive other than for Good Reason; *provided, however*, that in the event the Executive's employment is terminated for any reason and subsequently a Change in Control occurs, the Executive shall not be entitled to any benefits hereunder, other than pursuant to Sections 3.1 and 3.2:

(a) the Company shall pay to the Executive, when due, the Executive's base compensation and any bonus then payable through the Date of Termination;

(b) in lieu of any further salary payments to the Executive for periods subsequent to the Date of Termination, the Company shall pay as severance pay to the Executive a lump sum payment in cash within 30 days of the Date of Termination equal to the sum of the following:

(i) two (2) times the Executive's annual base compensation as in effect as of the Date of Termination or immediately prior to the Change in Control Date, whichever is greater; and

(ii) two (2) times the average of the annual bonus payments received, or entitled to be received, by the Executive for the three (3) most recent annual periods; *provided, however*, that if the Executive has been employed by the Company as an executive officer for less than three (3) years, then he or she shall be paid two (2) times the average of the annual bonus payments received, or entitled to be received, by the Executive for all prior annual periods that the Executive was employed by the Company as an executive officer (annualizing any prorated bonus for a partial first year);

(c) for a twenty-four (24) month period after such termination (the "Coverage Period"), the Company shall continue to provide the Executive and the Executive's eligible family members with medical and dental health benefits and life and disability insurance at least equal to those which would have been provided to the Executive and them if the Executive's employment had not been terminated or, if more favorable to the Executive, as in effect generally at any time thereafter; *provided, however*, that if the Executive becomes re-employed with another employer and is eligible to receive medical and dental health benefits and life and disability insurance under another employer's plans, the Company's obligations under this Section 3.3(c) shall be reduced to the extent comparable benefits are actually received by the Executive during the twenty-four (24) month period following the Executive's termination, and any such benefits actually received by the Executive shall be reported to the Company; and

(d) the Company shall pay to the Executive on or about the date or dates that the contributions would have been made an amount equal to the aggregate amount of

the Company's maximum contributions that would have been made under the Company's 401(k) plan (the "401(k) Plan") during the Coverage Period if the Executive had continued to be employed and participated in the 401(k) Plan during the Coverage Period.

3.4. Certain Additional Payments by the Company.

(a) Anything in this Agreement to the contrary notwithstanding and except as set forth below, in the event it shall be determined that any Payment would be subject to the Excise Tax, then the Executive shall be entitled to receive an additional payment (a "Gross-Up Payment") in an amount such that after payment by the Executive of all taxes (including any interest or penalties imposed with respect to such taxes), including, without limitation, any income taxes (and any interest and penalties imposed with respect thereto) and Excise Tax imposed upon the Gross-Up Payment, the Executive retains an amount of the Gross-Up Payment equal to the Excise Tax imposed upon the Payments.

(b) Subject to the provisions of Section 3.4(c), all determinations required to be made under this Section 3.4, including whether and when a Gross-Up Payment is required and the amount of such Gross-Up Payment and the assumptions to be utilized in arriving at such determination, shall be made by the nationally recognized certified public accounting firm used by the Company immediately prior to the Change in Control or, if such firm declines to serve, such other nationally recognized certified public accounting firm as may be designated by the Executive (the "Accounting Firm") which shall provide detailed supporting calculations both to the Company and the Executive within 15 business days of the receipt of notice from the Executive that there has been a Payment, or such earlier time as is requested by the Company. All fees and expenses of the Accounting Firm shall be borne solely by the Company. Subject to Section 3.4(e) below, any Gross-Up Payment, as determined pursuant to this Section 3.4, shall be paid by the Company to the Executive within five days of the receipt of the Accounting Firm's determination. Any determination by the Accounting Firm shall be binding upon the Company and the Executive. For purposes of making the calculations required by this Section 3.4, the Accounting Firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good-faith interpretations concerning the application of Sections 280G and 4999 of the Internal Revenue Code of 1986, as amended (the "Code"). As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Gross-Up Payments which will not have been made by the Company should have been made ("Underpayment"), consistent with the calculations required to be made hereunder. In the event that the Company exhausts its remedies pursuant to Section 3.4(c) and the Executive thereafter is required to make a payment of any Excise Tax, the Accounting Firm shall determine the amount of the Underpayment that has occurred and any such Underpayment shall be promptly paid by the Company to or for the benefit of the Executive.

(c) The Executive shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Company of the Gross-Up Payment. Such notification shall be given as soon as practicable but no later than ten business days after the Executive is informed in writing of such claim and shall apprise the Company of the nature of such claim and the date on which such claim is requested to be paid. The Executive shall not pay such claim prior to the expiration of the 30-day period following the

date on which it gives such notice to the Company (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Company notifies the Executive in writing prior to the expiration of such period that it desires to contest such claim, the Executive shall:

- (i) give the Company any information reasonably requested by the Company relating to such claim;
- (ii) take such action in connection with contesting such claim as the Company shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by the Company;
- (iii) cooperate with the Company in good faith in order effectively to contest such claim; and
- (iv) permit the Company to participate in any proceedings relating to such claim;

provided, however, that the Company shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest and shall indemnify and hold the Executive harmless, on an after-tax basis, for any Excise Tax or income tax (including interest and penalties with respect thereto) imposed as a result of such representation and payment of costs and expenses. Without limitation on the foregoing provisions of this Section 3.4(c), the Company shall control all proceedings taken in connection with such contest and, at its sole option, may pursue or forgo any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at its sole option, either direct the Executive to pay the tax claimed and sue for a refund or contest the claim in any permissible manner, and the Executive agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Company shall determine; provided, however, that if the Company directs the Executive to pay such claim and sue for a refund, the Company shall advance the amount of such payment to the Executive, on an interest-free basis and shall indemnify and hold the Executive harmless, on an after-tax basis, from any Excise Tax or income tax (including interest or penalties with respect thereto) imposed with respect to such advance or with respect to any imputed income with respect to such advance; and further provided that any extension of the statute of limitations relating to payment of taxes for the taxable year of the Executive with respect to which such contested amount is claimed to be due is limited solely to such contested amount. Furthermore, the Company's control of the contest shall be limited to issues with respect to which a Gross-Up Payment would be payable hereunder and the Executive shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

(d) If, after the receipt by the Executive of an amount advanced by the Company pursuant to Section 3.4(c), the Executive becomes entitled to receive any refund with respect to such claim, the Executive shall (subject to the Company's complying with the requirements of Section 3.4(c)) promptly pay to the Company the amount of such refund

(together with any interest paid or credited thereon after taxes applicable thereto). If, after the receipt by the Executive of an amount advanced by the Company pursuant to Section 3.4(c), a determination is made that the Executive shall not be entitled to any refund with respect to such claim and the Company does not notify the Executive in writing of its intent to contest such denial of refund prior to the expiration of 30 days after such determination, then such advance shall be forgiven and shall not be required to be repaid and the amount of such advance shall offset, to the extent thereof, the amount of Gross-Up Payment required to be paid.

(e) Notwithstanding any other provision of this Section 3.4, the Company may withhold and pay over to the Internal Revenue Service for the benefit of the Executive all or any portion of the Gross-Up Payment that it determines in good faith that it is or may be in the future required to withhold, and the Executive hereby consents to such withholding.

(f) Definitions. The following terms shall have the following meanings for purposes of this Section 3.4.

(i) "Excise Tax" shall mean the excise tax imposed by Section 4999 of the Code, together with any interest or penalties imposed with respect to such excise tax.

(ii) A "Payment" shall mean any payment, benefit or distribution in the nature of compensation (within the meaning of Section 280G(b)(2) of the Code) to or for the benefit of the Executive, whether paid or payable pursuant to this Agreement or otherwise.

3.5. Accelerated Vesting of Options and other Equity-Based Awards upon a Change in Control Notwithstanding anything to the contrary set forth in any stock, option or other equity incentive award plan of the Company or in any option, restricted stock or other equity-based award agreement between the Company and the Executive (regardless of whether such agreement is under any such stock, option or other equity incentive award plan), upon a Change in Control (or at such other time prior to a Change in Control as may be determined by the Board in its discretion), all options to acquire any equity securities of the Company held by the Executive shall immediately become exercisable and fully vested and all shares of restricted stock, restricted stock units, deferred stock awards and other awards based upon the Company's equity securities held by the Executive shall immediately become fully vested, exercisable or payable, as applicable, and any forfeiture provisions with respect to such awards shall immediately lapse; provided, however, that the payment of any such accelerated amounts may be delayed to the extent necessary to comply with Code Section 409A and any regulations promulgated thereunder. If the vesting of an award has been accelerated pursuant to this Section 3.5 expressly in anticipation of a Change in Control and the Board later determines that the Change in Control will not be consummated, the Board may rescind the effect of the acceleration as to any accelerated awards.

3.6 Notice. Any termination of the Executive's employment by the Company or the Executive shall be communicated by written notice of termination to the other party (the "Notice of Termination"). The Notice of Termination shall indicate the specific termination provision in this Agreement relied upon and shall set forth in reasonable detail the facts and

circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated.

3.7 Termination Obligations.

(a) The Executive hereby acknowledges and agrees that all Personal Property and equipment furnished to or prepared by the Executive in the course of or incident to his employment, belongs to the Company and shall be promptly returned to the Company upon termination of the Executive's employment. "Personal Property" includes, without limitation, all electronic devices of the Company used by the Executive, including, without limitation, personal computers, facsimile machines, cellular telephones, pagers and tape recorders and all books, manuals, records, reports, notes, contracts, lists, blueprints, maps and other documents, or materials, or copies thereof (including computer files), and all other proprietary information relating to the business of the Company. Following termination, the Executive will not retain any written or other tangible material containing any proprietary information of the Company.

(b) The Executive's obligations under this Section 3.7 and Section 4 hereof shall survive termination of the Executive's employment and the expiration of this Agreement.

(c) Upon termination of the Executive's employment, the Executive will be deemed to have resigned from all offices and directorships then held with the Company or any affiliate.

3.8 No Duty to Mitigate. The Executive shall not be required to mitigate the amount of any payment provided for herein by seeking other employment or otherwise, nor shall the amount of any payment or benefit provided for herein be reduced by any compensation earned by the Executive as the result of employment by another employer.

**4. CONFIDENTIALITY, NONCOMPETITION AND NONSOLICITATION COVENANTS**

4.1 Confidentiality. In consideration of and in connection with the benefits provided to the Executive under this Agreement, the Executive hereby agrees that the Executive will not, during the Executive's employment or at any time thereafter directly or indirectly disclose or make available to any person, firm, corporation, association or other entity for any reason or purpose whatsoever, any Confidential Information (as defined below). The Executive agrees that, upon termination of his employment with the Company, all Confidential Information in his possession that is in written or other tangible form (together with all copies or duplicates thereof, including computer files) shall be returned to the Company and shall not be retained by the Executive or furnished to any third party, in any form except as provided herein; *provided, however*, that the Executive shall not be obligated to treat as confidential, or return to the Company copies of any Confidential Information that (i) was publicly known at the time of disclosure to the Executive, (ii) becomes publicly known or available thereafter other than by any means in violation of this Agreement or any other duty owed to the Company by the Executive, or (iii) is lawfully disclosed to the Executive by a third party. As used in this Agreement the term "Confidential Information" means information disclosed to the Executive or

known by the Executive as a consequence of or through his relationship with the Company, about the owners, tenants, employees, consultants, vendors, business methods, public relations methods, organization, procedures, property acquisition and development, or finances, including, without limitation, information of or relating to owner or tenant lists of the Company and its affiliates.

4.2 Noncompetition. During the term of the Executive's employment, the Executive shall not engage in any activities, directly or indirectly, in respect of commercial real estate, and will not make any investment in respect of industrial real estate, other than through ownership of not more than five percent (5%) of the outstanding shares of a public company engaged in such activities and through investments listed on Schedule I hereto.

4.3 Nonsolicitation. In consideration of and in connection with the benefits provided to the Executive under this Agreement, for a period of two (2) years following the Date of Termination, the Executive shall not solicit or induce any of the Company's or its affiliates' employees, agents or independent contractors to end their relationship with the Company or its affiliates, or recruit, hire or otherwise induce any such person to perform services for the Executive, or any other person, firm or company.

## 5. GENERAL PROVISIONS

### 5.1 Successors; Binding Agreement

(a) The Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. Failure of the Company to obtain such assumption and agreement prior to the effectiveness of any such succession shall be a breach of this Agreement and shall entitle the Executive to receive compensation from the Company in the same amount and on the same terms to which the Executive would be entitled hereunder if the Executive terminated the Executive's employment for Good Reason following a Change in Control, except that for purposes of implementing the foregoing, the date on which any such succession becomes effective shall be deemed the Date of Termination. Unless expressly provided otherwise, "Company" as used herein shall mean the Company as defined in this Agreement and any successor to its business and/or assets as aforesaid.

(b) This Agreement shall inure to the benefit of and be enforceable by the Executive and the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If the Executive should die while any amount would still be payable to the Executive hereunder had the Executive continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of his Agreement to the Executive's devisee, legatee or other designee or, if there is no such designee, to the Executive's estate.

5.2 Injunctive Relief and Enforcement. The Executive acknowledges that the remedies at law for any breach by him of the provisions of Sections 3.7 or 4 hereof may be

inadequate and that, therefore, in the event of breach by the Executive of the terms of Sections 3.7 or 4 hereof, the Company shall be entitled to institute legal proceedings to enforce the specific performance of this Agreement by the Executive and to enjoin the Executive from any further violation of Sections 3.7 or 4 hereof and to exercise such remedies cumulatively or in conjunction with all other rights and remedies provided by law and not otherwise limited by this Agreement.

5.3 No Contract of Employment. The Executive acknowledges that the Executive's employment with the Company is at will. This Agreement shall not confer upon the Executive any right of continued or future employment by the Company or any right to compensation or benefits from the Company except the rights specifically stated herein, and shall not limit the right of the Company to terminate the Executive's employment at any time with or without cause.

5.4 Notice. For the purposes of this Agreement, notices, demands and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when addressed as follows and (i) when personally delivered, (ii) when transmitted by telecopy, electronic or digital transmission with receipt confirmed, (iii) one day after delivery to an overnight air courier guaranteeing next day delivery, or (iv) upon receipt if sent by certified or registered mail. In each case notice shall be sent to:

If to Executive:        [Name]  
                                  AMB Property Corporation  
                                  [Address]  
                                  [Address]  
                                  Facsimile:

If to the                 AMB Property Corporation  
Company:                Pier 1, Bay 1  
                                  San Francisco, CA 94111  
                                  Attention: General Counsel  
                                  Facsimile: (415) 394-9001

or to such other address as any party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

5.5 Severability. The invalidity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect. In addition, in the event any provision in this Agreement shall be determined by any court of competent jurisdiction to be unenforceable by reason of extending for too great a period of time or over too great a geographical area or by reason of being too extensive in any other respect, each such agreement shall be interpreted to extend over the maximum period of time for which it may be enforceable and to the maximum extent in all other respects as to which it may be enforceable, and enforced as so interpreted, all as determined by such court in such action.



5.6 Assignment. This Agreement may not be assigned by the Executive, but may be assigned by the Company to any successor to its business and will inure to the benefit and be binding upon any such successor.

5.7 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

5.8 Headings. The headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

5.9 Choice of Law. This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of California without giving effect to the principles of conflict of laws thereof.

5.10 Indemnification. To the fullest extent permitted under applicable law, the Company shall indemnify, defend and hold the Executive harmless from and against any and all causes of action, claims, demands, liabilities, damages, costs and expenses of any nature whatsoever (collectively, "Damages") directly or indirectly arising out of or relating to the Executive discharging the Executive's duties on behalf of the Company and/or its respective subsidiaries and affiliates, so long as the Executive acted in good faith within the course and scope of the Executive's duties with respect to the matter giving rise to the claim or Damages for which the Executive seeks indemnification.

5.11 LIMITATION ON LIABILITIES. IF EITHER THE EXECUTIVE OR THE COMPANY IS AWARDED ANY DAMAGES AS COMPENSATION FOR ANY BREACH OR ACTION RELATED TO THIS AGREEMENT, A BREACH OF ANY COVENANT CONTAINED IN THIS AGREEMENT (WHETHER EXPRESS OR IMPLIED BY EITHER LAW OR FACT), OR ANY OTHER CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ANY BREACH OF ANY PROVISION OF THIS AGREEMENT, SUCH DAMAGES SHALL BE LIMITED TO CONTRACTUAL DAMAGES AND SHALL EXCLUDE (I) PUNITIVE DAMAGES, AND (II) CONSEQUENTIAL AND/OR INCIDENTAL DAMAGES (E.G., LOST PROFITS AND OTHER INDIRECT OR SPECULATIVE DAMAGES). THE MAXIMUM AMOUNT OF DAMAGES THAT THE EXECUTIVE MAY RECOVER FOR ANY REASON SHALL BE THE AMOUNT EQUAL TO ALL AMOUNTS OWED (BUT NOT YET PAID) TO THE EXECUTIVE PURSUANT TO THIS AGREEMENT THROUGH ITS TERM AND THROUGH ANY APPLICABLE SEVERANCE PERIOD, PLUS INTEREST ON ANY DELAYED PAYMENT AT THE MAXIMUM RATE PER ANNUM ALLOWABLE BY APPLICABLE LAW FROM AND AFTER THE DATE(S) THAT SUCH PAYMENTS WERE DUE.

5.12 WAIVER OF JURY TRIAL. TO THE EXTENT APPLICABLE, EACH OF THE PARTIES TO THIS AGREEMENT HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL FOR ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.

5.13 Attorneys' Fees. If any legal action, arbitration or other proceeding, is brought for the enforcement of this Agreement, or because of an alleged dispute, breach or default in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, including any appeal of such action or proceeding, in addition to any other relief to which that party may be entitled.

5.14 Entire Agreement. This Agreement contains the entire agreement and understanding between the Company and the Executive with respect to the matters contained herein, and no representations, promises, agreements or understandings, written or oral, not herein contained shall be of any force or effect. This Agreement shall not be changed unless in writing and signed by both the Executive and the Company.

5.15 The Executive's Acknowledgment The Executive acknowledges (a) that he has had the opportunity to consult with independent counsel of his own choice concerning this Agreement, and (b) that he has read and understands the Agreement, is fully aware of its legal effect, and has entered into it freely based on his own judgment.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Change in Control and Noncompetition Agreement as of the date and year first written above.

AMB PROPERTY, L.P.  
a Delaware limited partnership

By: AMB Property Corporation  
its general partner

By: \_\_\_\_\_

Name:  
Title:

EXECUTIVE  
\_\_\_\_\_

Name:

S-1