

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

March Joint Powers Authority
3430 Bundy Avenue
Suite 107, Building 3408
March Air Force Base, California 92518
Attn: Executive Director

Exempt from Recording Fee per
Government Code §27383

(Space above for Recorder's Use)

**THE MARCH GLOBALPORT
DISPOSITION AND DEVELOPMENT AGREEMENT**

among

**THE MARCH JOINT POWERS REDEVELOPMENT AGENCY
a California redevelopment agency,**

**THE MARCH JOINT POWERS AUTHORITY
a California joint powers agency,**

and

**MARCH INTERNATIONAL LOGISTICS CENTER, LLC
a California limited liability company**

[Dated as of July 18, 2001 for reference purposes only]

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ARTICLE 1. EFFECTIVE DATE; PARTIES; REPRESENTATIONS AND WARRANTIES:

1.1 Effective Date of Agreement. This March Globalport - Disposition and Development Agreement ("Agreement") is dated July 18, 2001, for reference purposes only. This Agreement will not become effective until the date ("Effective Date") on which all of the following are true:

- (i) This Agreement has been approved and executed by the appropriate authorities of the Developer, as defined in Section 1.2.2¹, and this Agreement has been delivered to the Agency;
- (ii) Following all legally required notices and hearings required by CRL Section 33431, the California Environmental Quality Act ("CEQA") and other applicable legal provisions, this Agreement has been approved by the Agency's and Authority's governing bodies;
- (iii) This Agreement has been executed by the appropriate authorities of the Agency and Authority and delivered to Developer. _____

The transactions described in this Agreement were approved by the Agency and Authority on July 18, 2001. At the same time, the Agency and Authority directed that certain modifications be made to the form of this Agreement which was presented at the public hearing held on July 18, 2001. The Agency and Authority authorized their representatives to execute this Agreement following the inclusion of such modifications. This Agreement shall first be tendered to the Developer for its execution. If this Agreement is not fully executed and returned to the Agency within fifteen (15) days of the date that it is delivered to the Developer for execution, then the Agency's and Authority's approval of this Agreement shall be deemed automatically rescinded and this Agreement may not thereafter become effective. This Agreement shall be recorded by the Agency against the Site (hereinafter defined) within thirty (30) days from the Effective Date.

¹ All article and section references are to articles and sections of this Agreement unless otherwise stated.

1.2 Parties to Agreement.

1.2.1 The Agency. The Agency is the March Joint Powers Redevelopment Agency, a public body, corporate and politic, organized and existing pursuant to the California Community Redevelopment Law ("CRL") (Health and Safety Code Section 33000, et seq.). The mailing address of the Agency is P.O. Box 7480, Moreno Valley, California 92552; telephone (909) 656-7000; facsimile (909) 653-5558, with copies to Best Best & Krieger LLP, 3750 University Avenue, Suite 400, Riverside, California 92501, Attention: March Joint Powers Redevelopment Agency Counsel, facsimile (909) 686-3083.

The Agency represents and warrants to Developer that:

- (i) The Agency is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the California Community Redevelopment Law (California Health & Safety Code Section 33000, et seq.);
- (ii) The Agency has taken all actions required by law to approve the execution of this Agreement;
- (iii) The Agency's entry into this Agreement and/or the performance of the Agency's obligations under this Agreement does not violate any contract, agreement or other legal obligation of the Agency;
- (iv) The Agency's entry into this Agreement and/or the performance of the Agency's obligations under this Agreement does not constitute a violation of any state or federal statute or judicial decision to which the Agency is subject;
- (v) There are no pending lawsuits or other actions or proceedings which would delay, prevent or impair the timely performance of the Agency's obligations under this Agreement;
- (vi) The Agency has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement has been duly authorized and no other action by Agency is requisite to the valid and binding

execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein; and

- (vii) The individual executing this Agreement is authorized to execute this Agreement on behalf of the Agency.

The representations and warranties set forth above are material consideration to the Developer and the Agency acknowledges that the Developer is relying upon the representations set forth above in undertaking the Developer's obligations set forth in this Agreement.

All of the terms, covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of the Agency and its nominees, successors and assigns.

1.2.2 Authority. The Authority is the March Joint Powers Authority, a California joint powers agency formed and operating in accordance with Government Code Section 6500, et seq. The address of the Authority for purposes of this Agreement is P.O. Box 7480, Moreno Valley, California 92552; telephone (909) 656-7000; facsimile (909) 653-5558, with copies to Best Best & Krieger LLP, 3750 University Avenue, Suite 400, Riverside, CA 92501, Attention: March Joint Powers Authority Counsel, facsimile (909) 686-3083.

The Authority represents and warrants to Developer that:

- (i) The Authority is a California joint powers agency, exercising governmental functions and powers and organized and existing pursuant to California Government Code Section 6500, et seq.;
- (ii) The Authority has taken all actions required by law to approve the execution of this Agreement;
- (iii) The Authority's entry into this Agreement does not violate any contract, agreement or other legal obligation of the Authority;
- (iv) The Authority's entry into this Agreement does not constitute a violation of any state or federal statute or judicial decision to which the Authority is subject;
- (v) The Authority has the legal right, power and authority to enter into this Agreement, and the execution, delivery and performance of this Agreement has been duly authorized and no other action by Authority is requisite to the

valid and binding execution and delivery of this Agreement, except as otherwise expressly set forth herein; and

- (vi) The individual executing this Agreement is authorized to execute this Agreement on behalf of the Authority.

The representations and warranties set forth above are material consideration to the Developer and the Authority acknowledges that the Developer is relying upon the representations set forth above in undertaking the Developer's obligations set forth in this Agreement.

All of the terms, covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of the Authority and its nominees, successors and assigns

1.2.2.1 Limited Scope of Authority's Entry Into this Agreement. The Authority holds a master leasehold interest in the Property defined in Section 2.4.16 pursuant to the Master Lease described in Section 2.3(vii). The Parties anticipate that at a future date, the Government may convey fee title to the Application Property defined in Section 2.3(ii) to the Authority. The Authority is a Party to this Agreement for the sole purpose of securing the Authority's consent, as the potential holder of an interest in the Master Lease and as the potential fee holder of the Property to the Agency's lease of portions of the Property in accordance with Article 6 hereof.

1.2.3 Developer. The Developer is March International Logistics Center, LLC, a California limited liability company doing business as The March Globalport. The address of the Developer for purposes of this Agreement is P.O. Box 7330, Moreno Valley, California 92552; telephone (909) 697-6704; facsimile (909) 697-6705.

Developer represents and warrants to Agency that:

- (i) The Developer is a duly formed California limited liability company in good standing and lawfully entitled to do business in the State of California;
- (ii) The individual(s) executing this Agreement is/are authorized to execute this Agreement on behalf of the Developer;

- (iii) The Developer has taken all actions required by law to approve the execution of this Agreement;
- (iv) The Developer's entry into this Agreement and/or the performance of the Developer's obligations under this Agreement does not violate any contract, agreement or other legal obligation of the Developer;
- (v) The Developer's entry into this Agreement and/or the performance of the Developer's obligations under this Agreement does not constitute a violation of any state or federal statute or judicial decision to which the Developer is subject;
- (vi) There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of the Developer's obligations under this Agreement;
- (vii) The Developer has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by Developer is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein; and
- (viii) The Developer possesses sufficient financial capital, or the ability to obtain sufficient financial capital, to undertake and timely complete its obligations under and Exhibit B of this Agreement.

The representations and warranties set forth herein are material consideration to the Agency and the Developer acknowledges that the Agency is relying upon the representations set forth above in undertaking the Agency's obligations set forth above.

All of the terms, covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of the Developer and its permitted nominees, successors and assigns. Wherever the term "Developer" is used herein or therein, such term shall include any permitted nominee, assignee or successor of the Developer.

The qualifications and identity of the Developer and its constituent members, shareholders, partners and all other persons holding a legal or equitable interest therein are of particular concern to the Agency, and it is because of such qualifications and identity that the Agency has entered into this Agreement with the Developer. No voluntary or involuntary successor-in-interest of the Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein. The Developer may not assign, lease, encumber, convey, hypothecate or transfer all or any part of this Agreement or the Property except in strict accordance with Articles 3 and 4 hereof.

1.2.4 Agency and Developer are sometimes individually referred to herein as "Party" and collectively as "Parties." The terms "Party" or "Parties" specifically excludes the Authority unless the wording or context of a particular provision clearly provides otherwise.

1.3 **Covenant re Continuing Disclosure.** The Agency shall notify the Developer in writing within thirty (30) days from the Agency's becoming aware of any fact, circumstance or occurrence which would cause, or have the potential to cause, any of the representations and warranties of the Agency set forth in Section 1.2.1 to be false in any material respect or which has the potential to materially impair the Agency's ability to carry out its obligations under this Agreement.

The Authority shall notify the Developer in writing within thirty (30) days from the Authority's becoming aware of any fact, circumstance or occurrence which would cause, or have the potential to cause, any of the representations and warranties of the Authority set forth in Section 1.2.2 to be false in any material respect.

The Developer shall notify the Agency and Authority in writing within thirty (30) days from the Developer's becoming aware of any fact, circumstance or occurrence which would cause, or have the potential to cause, any of the representations and warranties of the Developer set forth in Section 1.2.3 to be false in any material respect or which has the potential to materially impair the Developer's ability to carry out its obligations under this Agreement.

ARTICLE 2. RECITALS ABOUT THE PLAN AND PROJECT; DEFINITIONS.

2.1 The Redevelopment Plan and Project Area. The Commission approved and adopted a Redevelopment Plan for the Project Area by its adoption of Ordinance No. 96-02 on July 10, 1996. This Agreement is subject to the provisions of the Redevelopment Plan, which is incorporated by this reference.

The Project Area is located in the County of Riverside and its boundaries are specifically described in the Redevelopment Plan.

2.2 Purpose of this Agreement. This Agreement and the Exhibits attached hereto implement the Redevelopment Plan for the Project Area, the Base Reuse Plan, the Air Cargo Port Development Plan and the General Plan by facilitating the redevelopment of the Site (hereinafter defined) and the elimination of physical and economic blight within the Project Area.

The redevelopment of the Site pursuant to this Agreement is in the best interests of the Authority and Agency and the public health, safety and welfare and is in accordance with public purposes set forth in federal, state and local law and regulation. Implementation of this Agreement will further the goals and objectives of the Redevelopment Plan, the Base Reuse Plan, the Air Cargo Port Development Plan, the Public Benefit Conveyance for the March Inland Port, and the General Plan by alleviating economic and physical blight within the Project Area.

2.3 Factual Issues. This Agreement is made with reference to the following facts:

- (i) On or about March 31, 1996, the March Air Force Base ("Base") ceased active duty military operations and the airfield, certain associated flight facilities, and a portion of the real property adjoining such airfield (collectively, the "Flying Facilities") were transferred to the operational control of the Air Force Reserve Command (the "AFRC") which continues to conduct reserve duty military flying activities at the Flying Facilities;
- (ii) Thereafter, the Authority, desiring to establish a civil airport facility on the portion of the Base not so transferred to the AFRC, applied to the United States Government ("Government") for a public benefit transfer of such real

property, together with certain personal property (collectively, the "Application Property"), under Section 13(g) of the Surplus Property Act of 1944, as amended (the "Application");

- (iii) On May 5, 1997, the Authority, pursuant to a written lease (the "Initial Lease") leased the Application Property from the Government for a period of twenty-five (25) years until May 2022;
- (iv) On May 7, 1997, the Government and the Authority entered into a written Joint Use Agreement under which the Government allowed the Authority to conduct certain aviation activities on the Application Property;
- (v) On June 12, 1997, the Federal Aviation Administration approved the Public Benefit Conveyance Application for the March Inland Port;
- (vi) On June 28, 1999, the Government, after declaring the Application Property surplus to its needs and deciding to dispose of the same to the Authority, accepted the Application;
- (vii) Upon compliance with the requirements of Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") and other legal and policy requirements, the Government intends to convey the Application Property to the Authority by one or more conveyances and the Authority has agreed to accept such conveyance or conveyances; and
- (viii) Pending conveyance of the Application Property to the Authority and on or about June 28, 1999, the Government and the Authority entered into that certain written lease entitled "Lease in Furtherance of Conveyance - March Inland Port" and hereinafter referred to as the "Master Lease," which Master Lease, by its terms, superseded the Initial Lease. On or about July 23, 1999, the Authority assigned, and the Agency accepted, the Authority's rights under the Master Lease.
- (ix) On July 23, 1999, the Agency and the Developer entered into that certain written lease entitled "Ground Lease" ("March Philmar Ground Lease"), by which the Agency sublet to the Developer a portion of the Site for development as a warehouse facility.

- (x) On August 25, 1999, the Developer assigned its interest in the March Philmar Ground Lease to March Philmar LLC, a California limited liability company ("March Philmar"). March Philmar subsequently sublet the property subject to the March Philmar Ground Lease to Phillips Consumer Electronics Company, a division of Phillips Electronic North America Corporation ("Phillips") and constructed thereon for Phillips' benefit an approximately 225,000 square feet warehouse facility. The Authority issued a certificate of occupancy for such warehouse facility on June 16, 2000.

2.4 Basic Definitions.

2.4.1 "Act" means the Defense Base Realignment and Closure Act of 1990.

2.4.2 "Agency" means The March Joint Powers Redevelopment Agency, a California public agency, and any nominee, assignee of, or successor to its rights, powers and responsibilities.

2.4.3 "Air Cargo Port Development Plan" means that certain document dated April, 1999, and entitled "March Inland Port Air Cargo Development Plan; provided, however, that any amendment to the Air Cargo Port Development Plan which: (i) changes the uses of, or the development permitted on, the Property; (ii) otherwise changes the restrictions or controls that apply to the Property; or (iii) otherwise materially and adversely affects Developer's obligations or rights under this Agreement shall not be approved until the Agency and Authority have met and consulted with Developer concerning said amendment. The consent of Developer, however, shall not be required for any amendment.

2.4.4 "Authority" means The March Joint Powers Authority, a California joint powers authority formed by the legislative bodies of the County of Riverside and the cities of Moreno Valley, Perris and Riverside in response to the realignment of the Base by the Government pursuant to the Act.

2.4.5 "Aviation-Related Use" means any use that requires or promotes a Direct Aviation Use.

2.4.6 "Base Reuse Plan" means Section IV (dated April 16, 1997) of that certain document entitled "March Air Force Base Final Reuse Plan" dated October 2, 1996; provided, however, that any amendment to the Base Reuse Plan which: (i) changes the uses of, or the development permitted on, the Property; (ii) otherwise changes the restrictions or controls that apply to the Property; or (iii) otherwise materially and adversely affects Developer's obligations or rights under this Agreement shall not be approved until the Agency and Authority have met and consulted with Developer concerning said amendment. The consent of Developer, however, shall not be required for any amendment.

2.4.7 "Business Days" means any day of the week except Saturday, Sunday, or any day which is a state or federally-recognized holiday.

2.4.8 "Commission" means the Authority's legislative body, which also serves as the Agency's governing board and legislative body.

2.4.9 "CRL" means the California Community Redevelopment Law (Health and Safety Code Sections 33000, *et seq.*). The Agency was established pursuant to Chapter 4.5 (commencing with Section 33492) of the CRL and is vested with those powers set forth in the March Joint Powers Redevelopment Agency legislation (CRL Section 33492.80 through 33492.89, inclusive).

2.4.10 "Developer" means March International Logistics Center LLC, a California limited liability company, and its permitted successors and assigns.

2.4.11 "Development Ground Lease(s)" means a ground lease, substantially the form attached hereto as Exhibit C, ground leasing a portion of the Property to the Developer (or its

