

**WEST MARCH
DISPOSITION AND DEVELOPMENT AGREEMENT**

between

**MARCH JOINT POWERS REDEVELOPMENT AGENCY
a California public agency,**

**LNR RIVERSIDE, LLC
a California limited liability company**

and

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

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**WEST MARCH
DISPOSITION AND DEVELOPMENT AGREEMENT**

THIS WEST MARCH DISPOSITION AND DEVELOPMENT AGREEMENT (the "Agreement") is entered into this 27th day of December, 2001, by and between the **MARCH JOINT POWERS REDEVELOPMENT AGENCY**, a California public agency ("Agency") and **LNR RIVERSIDE, LLC**, a California limited liability company ("LNR"). The **MARCH JOINT POWERS AUTHORITY**, a California joint powers agency ("Authority"), is a party to Article 5, Section 6.16(b), Section 10.03 and Section 11.02 of this Agreement.

RECITALS

- A. In 1993, the Federal Government called for the realignment of the March Air Force Base (the "Base") and for a substantial reduction in its use as a military base. Subsequent to this, the neighboring communities of Moreno Valley, Perris, the City of Riverside and the County of Riverside joined together to form the Authority. In July 1995, the Authority instituted feasibility analyses to examine the potential of establishing the Agency in conformance with appropriate provisions of the California Community Redevelopment Law, California Health & Safety Code Sections 33000 *et seq.* (the "Redevelopment Law"). The Authority established the Agency on January 24, 1996.
- B. On July 10, 1996, the Agency adopted by Ordinance No. 96-02 the Redevelopment Plan for the March Air Force Base Redevelopment Project (the "Redevelopment Plan"). The purpose of this Agreement is to effectuate the Redevelopment Plan for the March Air Force Base Redevelopment Project by providing for the disposition and development of certain real property (the "Property") included within the boundaries of the Redevelopment Project Area, as described in the Redevelopment Plan. The Property is described in Exhibit A.
- C. On December 20, 2000, the Agency, LNR and Authority entered into an Exclusive Right to Negotiate Agreement (the "ERN") to provide for the exclusive negotiation between the parties concerning LNR's acquisition of the Property and development of a mixed use

commercial redevelopment project (the "Project"), which will be generally consistent with and implement the General Plan, Redevelopment Plan and Reuse Plan. This Agreement is intended to provide for LNR's phased acquisition of the Property from the Agency and the phased development of the Project upon the Property. The ERN shall terminate upon the Effective Date of this Agreement.

- D.** On December 3, 1999, the Authority submitted to the United States Air Force (the "Air Force") an application for an Economic Development Conveyance (the "EDC Application"). Under certain circumstances, property may be transferred from the Air Force to a Local Redevelopment Authority such as the Authority at no cost to help spur economic opportunities and job creation on the property. The EDC Application requested an Economic Development Conveyance of the Property at no cost and justified such conveyance by reciting the circumstances surrounding conveyance and potential future development of the Property. First, the EDC Application cited the Authority's singular mission of promoting the reuse of the Reuse Area, including the Property, and stated that any revenues and proceeds realized by the Authority would be used solely to support base reuse, economic growth and job development at the Base. Second, the EDC Application acknowledged that the Property has many "unknowns, encumbrances, restrictions and obstacles." Third, the EDC Application stated that financial assistance for development of the Property would be necessary because the cost of developing or reusing the Property does not "pencil out" under market conditions. As a result of these circumstances, the EDC Application concluded that "[w]ith the amount of improvement necessary to make the [Property] available to the real estate and development market, the [Property] generally lacks real value."
- E.** On January 28, 2000, the Air Force and the Authority entered into the Economic Development Conveyance Agreement Between the Department of the Air Force and the March Joint Powers Authority (the "EDC"). The EDC provides for transfer of the Property from the Air Force to the Authority at no cost. Consistent with federal law governing No-Cost Economic Development Conveyances, Section 2.1.1 of the EDC restricts the Authority's use of proceeds from any sale, lease or other use of the Property to promotion of the economic redevelopment of the Property and generation of jobs.

Pursuant to Section 2.1.3 of the EDC, allowable uses of such proceeds include construction of the Backbone Infrastructure.

F. Consistent with the findings and determinations set forth in the EDC Application regarding the minimal present value of the Property and numerous serious obstacles to its successful economic reuse and development, this Agreement contemplates the conveyance of the Property from the Agency to LNR without an immediate cash payment. Rather, the substantial consideration for conveyance of the Property is, in part, in the form of required investment by LNR in the Backbone Infrastructure on the Property to the acknowledged benefit of the Agency. The expected costs of such Backbone Infrastructure, set forth in the Approved Participation Model defined below, will exceed one hundred million dollars during the Term of this Agreement. The Backbone Infrastructure is necessary to meet the Agency's economic growth and job generation goals, and Agency finds and determines based upon substantial evidence that LNR's financial commitments, as set forth in the Approved Participation Model, are equal to or greater than the value of the Property.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, AGENCY, DEVELOPER AND, WITH RESPECT TO ARTICLE 5 AND SECTIONS 6.16(b), 10.03 AND 11.02, AUTHORITY, HEREBY AGREE AS FOLLOWS:

AGREEMENT

ARTICLE 1. DEFINITIONS

Section 1.01. Defined Terms.

“Actions” means all claims, actions, suits or other legal proceedings.

“Actual Knowledge” means, with respect to LNR, the then-current actual knowledge of the Senior Vice President, Southwest Region, of LNR, as of the date such representation is made, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation. With respect to the Agency and Authority, “Actual Knowledge” means the then-current actual knowledge of the

Executive Director of Agency or Authority, as applicable, as of the date such representation is made without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation.

“Additional Land Price” is defined in Section 4.01(b).

“Affiliate” means any entity controlling, controlled by or under common control with LNR, or any entity in which LNR, directly or indirectly, through one or more intermediaries, is a partner, shareholder, member, beneficiary or otherwise an owner.

“Agency” means the March Joint Powers Redevelopment Agency.

“Agreement” means this West March Disposition and Development Agreement.

“Annual Financial Statements” is defined in Section 6.15.

“Appraisal Process” is defined in Section 4.06.

“Appraised Fair Market Value” is defined in Section 4.05.

“Approved Participation Model” means the financial model for the Project, attached hereto as Exhibit B, as the such model is amended from time to time by Agency and LNR in accordance with this Agreement.

“Approved Title Condition” is defined in Section 5.04(d).

“Approved Title Policy” is defined in Section 5.04(d).

“Authority” means March Joint Powers Authority.

“Backbone Infrastructure” means roadways, dry utilities, storm water and sewer systems, and water storage and delivery systems, parking and parking structures and landscaping, including off-site infrastructure, required to serve the Project. The Backbone Infrastructure will be more fully described in the Specific Plan.

“Base” is defined in Recital A.

“Breakeven” means that (i) all LNR Capital invested in the Project to date has been returned to LNR, and (ii) LNR has received a twenty five percent (25%) Internal Rate of Return (IRR) on such LNR Capital.

“Commencement of Construction” or **“Commence Construction”** is defined in Section 6.02.

“Contingency Failure Notice” means that written notice delivered, as applicable, by LNR to Agency under Section 9.05(c) or Agency to LNR under Section 9.06(c), notifying the other party of its failure to satisfy one or more closing conditions.

“Cumulative Required Investment” is defined in Section 6.03.

“Cured Title Exceptions” is defined in Section 5.04(b).

“Designated Confidential Information” is defined in Section 13.13.

“Development Agreement” is defined in Section 5.03.

“DTSC” means the California Department of Toxic Substance Control.

“Economic Parameters” is defined in Section 4.03(b).

“EDC” is defined in Recital E.

“Effective Date” means that date first referenced herein above.

“Entitlement Schedule” means the schedule for processing entitlements from the Authority for the development of the Property attached hereto as Exhibit C.

“Entitlements” means any and all governmental permits and approvals necessary for the development of the Project on Property.

“Environmental Laws” means all federal, state, and local laws, ordinances, rules and regulations now or hereafter in force, as amended from time to time, in any way relating to or regulating human health or safety, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, and includes the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.*, the Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq.*, the Hazardous Substance Account Act, California Health and Safety Code § 25300, *et seq.*, the Hazardous Waste Control Law, California Health and Safety Code § 25100, *et seq.*, and the Porter-Cologne Water Quality Control Act, California Water Code § 13000, *et seq.*

“ERN” is defined in Recital C.

“Escrow Agent” is defined in Section 8.01.

“Exception Documents” is defined in Section 5.04(a).

“Extension Notice” is defined in Section 2.02(i).

“Final Conveyance Date” means the date of the closing of the sale or other final disposition of the fee interest in the last of the Option Parcels to third parties.

“Force Majeure” means a circumstance beyond the reasonable control of a party, including, without limitation, acts of any governmental body (provided, however that with respect to Agency’s obligations under this Agreement, any Agency or Authority nondiscretionary action shall be deemed to be within the reasonable control of Agency, and any

discretionary actions of Agency or Authority exercised in an arbitrary manner shall not be excused by Force Majeure), war, insurrection, sabotage, embargo, fire, flood, earthquake, strike or other labor disturbance, interruption of or delay in transportation, inability to obtain raw materials, supplies, equipment or power needed for the activity, extraordinary weather conditions, riots, acts of God, acts of the public enemy; epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions priority, litigation, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplier, and acts of another party, but shall expressly exclude lack of credit, funds or financing.

“FOSET” shall mean the Finding of Suitability for Early Transfer, made pursuant to 42 U.S.C. Section 9260(h)(3)(C).

“FOST” shall mean a Finding of Suitability to Transfer, made pursuant to U.S.C. Section 9620(h), which is a written determination by the Federal Government that a parcel can be transferred by the Federal Government by deed to Agency in full compliance with Section 120(h)(3) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA).

“General Plan” means the general plan for the Project Area adopted by Authority Resolution No. 99-12 on September 7, 1999, as it may be amended subsequent to the Effective Date hereof; provided, however, that any amendment to the General 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 LNR’s obligations or rights under this Agreement shall not be approved until the Agency and Authority have met and consulted with LNR concerning said amendment. The consent of LNR shall not be required for any amendment, but in the event the General Plan is amended prior to the execution of the Development Agreement, such event shall be a Recalculation Event hereunder.

“Grant Deed” is defined in Section 3.04 and Exhibit D.

“Hazardous Substances” means any substance or material that is described as a toxic or hazardous substance, waste, or material, or a pollutant or contaminant, or words of similar import, in any of the Environmental Laws, and includes asbestos, petroleum, petroleum products, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive matter, and chemicals which may cause cancer or reproductive toxicity.

“Internal Rate of Return (IRR)” means that rate of return that equates the present value of the future benefits with the present value of the investment outlays. For example, if total investor funds equaled \$4,000,000 and were invested on January 1, 1999 and the annual cash flows from the project equaled \$1,000,000, \$1,000,000, \$1,000,000 and \$5,000,000 on January 1, 2000, January 1, 2001, January 1, 2002 and January 1, 2003, respectively, then the internal rate of return on investor funds would be twenty-five percent (25%).

“Key Assumption” is defined in Section 4.03(a).

“Land Price” is defined in Section 4.01(a).

“LNR” means LNR Riverside, LLC, a California limited liability company.

“LNR Capital” means all cash invested by LNR in the Project from any source whether before or after the date of this Agreement and regardless of whether such investment is capitalized or expensed for financial reporting purposes, the fair market value of any real or personal property contributed to the Project by LNR to the extent not paid for by a cash payment or other cash reimbursement, and the principal amount of any indebtedness incurred by LNR for the Project, whether or not secured by any portion of the Project, whether before or after the date of this Agreement. LNR Capital does not include funds derived from public financing.

“LNR-Related Parties” means LNR and its members, constituent members, and Affiliates, and their respective directors, officers, agents and employees.

“Losses” means any and all losses, liabilities, judgments, suits, claims, damages, settlements, fines penalties, costs and expenses (including reasonable attorney’ fees, investigation costs, remediation costs, and court costs), of any kind or nature.

“Mortgagee” means the holder of any mortgage, deed of trust or other security interest authorized by this Agreement encumbering any portion of the Property.

“Minimum Job Generation Target” is defined in Section 6.03.

“Net Cash Flow” means the Project Revenues received after Breakeven, as further described in the Approved Participation Model.

“Non-Performing Party’s Conditions Notice” is defined in Section 9.05(c).

“Option” is defined in Section 3.01.

“Option Notice” is defined in Section 3.02.

“Option Parcel” is defined in Section 3.03.

“Original IRR Assumption” is defined in Section 4.03(c).

