

MARCH LIFECARE CAMPUS
DISPOSITION AND DEVELOPMENT AGREEMENT

between

MARCH JOINT POWERS REDEVELOPMENT AGENCY
a California public agency,

and

MARCH HEALTHCARE DEVELOPMENT, LLC
a California limited liability company

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MARCH LIFECARE CAMPUS

DISPOSITION AND DEVELOPMENT AGREEMENT

This **MARCH LIFECARE CAMPUS DISPOSITION AND DEVELOPMENT AGREEMENT** (the "Agreement") is entered into this ____ day of _____, 2010, by and between the **MARCH JOINT POWERS REDEVELOPMENT AGENCY**, a California public agency (the "Agency") and **MARCH HEALTHCARE DEVELOPMENT, LLC**, a California limited liability company (the "Developer") (individually a "Party" and collectively the "Parties").

RECITALS

A. On July 10, 1996, the Agency adopted the Redevelopment Plan for the March Air Force Base Redevelopment Project by Ordinance No. 96-02 (the "Redevelopment Plan"). The purpose of this Agreement is to effectuate the Redevelopment Plan by providing for the disposition and development of certain real property consisting of approximately one hundred sixty (160) acres (the "Property") included within the boundaries of the Redevelopment Project Area, as described in the Redevelopment Plan. The Property is owned by the March Joint Powers Authority (the "Authority"), as shown on the Site Map attached hereto as Exhibit A and incorporated herein by reference. The legal description of the Property is described in Exhibit B attached hereto and incorporated herein by reference.

B. Prior to the First Closing, the Agency and the Authority will have entered into an agreement pursuant to which, among other things, the Authority has agreed to convey the Property, or otherwise make the Property available so as to permit the Agency to comply with its obligations hereunder.

C. On March 20, 2008, the Agency and the Developer entered into a Restated Exclusive Right to Negotiate Agreement (the "ERN") to provide for the exclusive negotiation between the Parties concerning the Developer's acquisition of the Property and development of medical office building(s), hospital(s) and related healthcare facilities (i.e., Healthcare Facilities), as described in the Scope of Development, which will be generally consistent with and implement the General Plan, Redevelopment Plan and the March Air Force Base Reuse Plan. Effective June 17, 2009, the Agency and the Developer entered into a First Amendment to Restated Exclusive Right to Negotiate Agreement (the "First Amendment"), whereby the Negotiation Period under the ERN was extended to and including August 31, 2010.

D. This Agreement requires the Developer, among other things, to (i) remediate Hazardous Substances on and under the Property and within the existing improvements, (ii) design and construct the Backbone Infrastructure, and (iii) to acquire each Acquisition Parcel from the Agency and concurrently sell same to Third Party Developer(s)/End User(s) for the development of Health Care Facilities in accordance with the Entitlements and Scope of Development (the "Project").

E. This Agreement requires the Agency, among other things, to relocate certain tenants and convey each Acquisition Parcel and to reimburse the Developer for the cost of certain Horizontal Improvements pursuant to the Agency Note in the principal amount of Twenty Million, Five Hundred Thousand Dollars (\$20,500,000), together with interest thereon, payable from 80% of

Net Property Tax Increment The financial terms of this transaction are set forth in more detail herein and generally described in the Method of Finance.

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

AGREEMENT

ARTICLE 1. DEFINITIONS

Section 1.01. Defined Terms.

“**Acquisition and Development Agreement**” means that certain agreement between the Developer and each Third Party Developer(s)/End User(s) pursuant to which, among other things, (i) the Third Party Developer/End User commits to acquire one or more Acquisition Parcels, and develop thereon (and in some cases operate) a specified Health Care Facility, and (ii) Agency is the third party beneficiary. The principal terms of the Acquisition and Development Agreement are contained in Exhibit J attached hereto and incorporated herein by reference.

“**Acquisition Parcel(s)**” is defined in Section 3.01.

“**Actual Knowledge**” means, with respect to the Developer, the actual knowledge of Donald Ecker 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, “Actual Knowledge” means the actual knowledge of the Executive Director of the Agency, 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 Purchase Price**” is defined in Section 4.03.

“**Additional Purchase Price Illustration**” is attached hereto as Exhibit H and incorporated herein by reference.

“**Affiliate**” means any entity controlling, controlled by or under common control with the Developer or any Developer-Related Party, or any entity in which the Developer or any Developer-Related Party, 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.

“**Agency Note**” is attached hereto as Exhibit I and incorporated herein by reference. The Agency Note shall be executed and interest shall accrue upon acceptance of each element of the Horizontal Improvements by the Authority, with respect to the total amount of the direct and indirect costs actually incurred by Developer for such element of the Backbone Infrastructure.

“**Agency’s Conditions Precedent to First Closing**” is defined in Section 5.08.1.

“**Agreement**” means this March Health Care Disposition and Development Agreement.

“ALTA Survey” means a survey of land conducted in accordance with the standards established by the American Land Title Association.

“Anchor User” means any building where Gross Building Area, excluding parking, exceeds 150,000 square feet.

“Anchor User Discounts” means the actual discount provided each Anchor User not to exceed six and one-half percent (6.5%) of aggregate Sales Price of all Acquisition Parcels.

“Appraisal Process” is defined in Section 4.04.

“Appraised Fair Market Value” is defined in Section 4.04(ii).

“Army Parcels” means Parcels B-2C and B-2D and the associated property as shown on the Site Map.

“Authority” means March Joint Powers Authority.

“Authority Offices” means 23555 and 23533 Meyer Drive as shown on the Site Map.

“Avigation Easement” means that certain easement which will be granted to the March Inland Port Airport Authority in substantially the form attached hereto as Exhibit M and incorporated herein by reference.

“Backbone Infrastructure” means the central network system for streets, utilities and drainage within the medical campus area, as specifically shown in the Master Plot Plan. Backbone infrastructure includes, without limitation: Riverside Drive, Meyer Drive, bridges, internal roadways providing continuous access to existing uses, water mains, sewer and utility infrastructure (electrical and natural gas), as well as drainage facilities.

“Breach” is defined in Section 9.01.

“Cantonment Fence” means the boundaries of the March Air Reserve Base as shown on the Site Map.

“Closing” is defined in Section 5.05.

“Closing Date” is defined in Section 5.05.

“Completed Improvements” means the Improvements which have achieved Completion.

“Completion” or **“Completed”** means completion of the Improvements with respect to each Acquisition Parcel as evidenced by the issuance of a Release of Construction Covenants.

“Condition of Title” is defined in Section 5.06.

“Conditions Precedent” is sometimes herein used to refer to the Agency’s Conditions Precedent to First Closing, the Developer’s Conditions Precedent to First Closing and/or Conditions Precedent Applicable to All Closings, as applicable.

“Conditions Precedent Applicable to All Closings” are the Conditions Precedent described in Section 5.09.

“Conditions Precedent Failure Notice” means that written notice delivered, as applicable, by the Developer to the Agency under Section 9.04(a) or by the Agency to the Developer under Section 9.05(a), notifying the other Party of its failure to satisfy one or more closing conditions.

“Conditions Precedent to First Closing” is defined in Section 5.08.

“Construction Drawings” means all plans necessary to commence the Horizontal Improvements and the Vertical Improvements for each Phase.

“Construction Financing” is defined in Section 6.13.

“Construction Loan” is defined in Section 6.13.

“Consumer Price Index” means the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for Urban Wage Earners and Clerical Workers, Los Angeles-Riverside-Orange County, California “All Items,” (1982-1984 = 100). If at any time there shall not exist the Index in this format, the Agency shall substitute any official index published by the Bureau of Labor Statistics or successor or similar governmental agency as may then be in existence that shall, in the Agency’s opinion, be most nearly equivalent thereto. The sum to be increased in accordance with the provisions of the Index shall be increased using the following formula: the sum shall be increased by a percentage equal to the percentage increase, if any, in the Index published for the Comparison Month over the Index published for the Base Month; provided, however, in no event shall said sum be less than that which was due immediately preceding the date of adjustment. “Base Month” means July of the prior year. “Comparison Month” means the most recent month published by the Bureau of Labor Statistics prior to the July 1st of the year in which the calculation is performed.

“Costs of Sale(s)” means escrow and related costs and fees (excluding Sales Commission(s)) incurred by the Developer in connection with the sale of each Acquisition Parcel to a Third Party Developer(s)/End User(s), not to exceed two percent (2%) of the Sales Price.

“Cross Word Christian Church” means that certain nonprofit religious organization that owns the leasehold interest in the Cross Word Christian Church Property.

“Cross Word Christian Church Property” means Parcel J-1 Building Number 2600 and the associated property as shown on the Site Map.

“Cross Word Lease” is defined in Section 8.02(ii).

“Dark Fibre” means installed but unused conduit and fibre optic cables.

“Default” is defined in Section 9.02.

“Demolition” means the demolition of all above ground and underground structures and, unless otherwise approved by the Agency, removal of same from the Property as described in the Scope of Development and the Entitlements.

“Detention Basin” is generally shown on the Site Map.

“Developer” is a California limited liability company with CEO Strategic Solutions, LLC as its managing member.

“Developer’s Conditions Precedent to First Closing” is defined in Section 5.08.2.

“Developer-Related Parties” means the Developer, and its members partners, and its respective directors, officers, agents and employees.

“Due Diligence Termination Date” means one hundred eighty (180) days after the Effective Date.

“Effective Date” means that date first referenced hereinabove which is the date of execution of this Agreement by the Parties.

“Entitlements” means any and all current and/or prospective ministerial and/or discretionary governmental permits and approvals, including conditions of approval, necessary for the development of the Project on the Property, including, without limitation, the Specific Plan, the Mitigation and Monitoring Plan, and the Master Plot Plan, and any additional conditions imposed with respect to the foregoing imposed as a result of further environmental analysis pursuant to the California Environmental Quality Act.

“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.*

“Equity” is defined in Section 6.13.

“ERN” is defined in Recital C.

“Escrow” is defined in Section 5.01.

“Escrow Agent” is defined in Section 5.01.

“Exceptions” is defined in Section 5.06.

“Exempt Property” is defined in Section 7.02.

“Exempt Property Covenant” is defined in Section 7.02.

“First Conveyance” means the conveyance from the Agency to the Developer of the first Acquisition Parcel.

“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 Acquisition Parcels to Third Party Developer(s)/End User(s).

“Final Closing” means the Closing with respect to the last Acquisition Parcel.

“Final Closing Outside Date” is defined in Section 5.05.

“First Closing” means the date upon which the First Conveyance is made from the Agency to the Developer.

“First Closing Outside Date” is defined in Section 5.05.

“Force Majeure” means a circumstance beyond the reasonable control of a Party, including, without limitation, acts, or failure to act (when such governmental body is required by law to act), of any governmental body including, without limitation, the Agency and/or the Authority, 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; acts of terrorism, 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, or failure to act (when such governmental body is required by law to act), of the other Party, including, without limitation, the Agency and/or the Authority, but shall expressly exclude lack of credit, funds, financing or Third Party Developer(s)/End User(s) .

“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.

“Governmental Requirements” means all applicable laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State, the County, the Authority, or any other political subdivision in which the Property is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the Agency, the Developer or the Property, including all applicable state labor standards, the Authority zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions applicable to the Project, including, without limitation, disabled and handicapped access requirements under the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Sections 51, *et seq.* The Developer and the Third Party Developer(s)/End User(s), and its contractors and subcontractors shall comply with all Governmental Requirements applicable to public works, including, without limitation, the payment of prevailing wages in compliance with Labor Code Section 1770, *et seq.*, keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and complying with all regulations and statutory requirements pertaining thereto.

“Grant Deed” is defined in Section 3.02 and set forth in Exhibit C attached hereto and incorporated herein by reference.

“Gross Building Area” means the total square feet of area within the walls of the Vertical Improvements.

“Gross Property Tax Increment” means all property tax increment received by the Agency with respect to each Acquisition Parcel pursuant to Health & Safety Code Section 33670(b) from and after each Closing.

“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.

“Healthcare Facilities” means facilities the uses for which are permitted pursuant to Table 4-1 of the Specific Plan.

“Horizontal Improvements” means the improvements to be constructed by the Developer hereunder including Backbone Infrastructure, Demolition and Remediation, as set forth in Article 6 and the Scope of Development.

“Improvements” means the Horizontal Improvements and Vertical Improvements.

“Last Sale” means the earlier to occur of (i) the Closing with respect to the last Acquisition Parcel within the Property, or (ii) termination of this Agreement.

“Legal Description” means the legal description of the Property attached hereto as Exhibit B and incorporated herein by reference.

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

“Lost Revenue(s)” means those rental revenues lost by the Agency and/or the Authority as a result of the Developer’s entry upon any portion of the Property prior to Closing for purposes of installing Horizontal Improvements and/or Due Diligence.

“Master Plot Plan” means a scaled diagram for the specific plan area to be approved by the Authority, acting in its sole and absolute discretion, showing the following information, in schematic form: campus lot layout; building envelopes for all phases; all internal and external circulation systems, water, sewer, and drainage facilities serving individual parcels and campus as a whole; parking facilities; transportation facilities (e.g. bus shelters, bus/shuttle bay pullouts, bike lanes, etc.); easements; open space (including “public realm zone” areas); dry utilities, including electricity, gas, telephone and cable; any public service facility as needed; architectural design standards for development; grading plan; Phasing Schedule; landscaping plan, public realm zone plan; and any shared parking solutions.

“Memorandum of Agreement” is attached hereto as Exhibit K and incorporated herein by reference.

“Method of Finance” is attached hereto as Exhibit L and incorporated herein by reference.

