

**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,**

**TABLE OF CONTENTS**

**ARTICLE 1. DEFINITIONS.....3**  
Section 1.01. Defined Terms ..... 3  
Section 1.02. Additional Defined Terms ..... 9

**ARTICLE 2. TERM OF DISPOSITION AND DEVELOPMENT AGREEMENT..... 10**  
Section 2.01. Term..... 10  
Section 2.02. Automatic Extensions ..... 10  
Section 2.03. Financing Approval Contingency ..... 11

**ARTICLE 3. DISPOSITION OF THE PROPERTY ..... 11**  
Section 3.01. Option to Purchase ..... 11  
Section 3.02. Exercise of Option ..... 11  
Section 3.03. Successive Option Parcels ..... 11  
Section 3.04. Form of Deed ..... 12  
Section 3.05. Condition of Title..... 12  
Section 3.06. Time for and Place of Delivery of Deed ..... 12  
Section 3.07. Taxes and Assessments ..... 12  
Section 3.08. Conveyance Free of Possession ..... 12  
Section 3.09. Condition of the Property..... 12

**ARTICLE 4. APPROVED PARTICIPATION MODEL MATTERS ..... 14**  
Section 4.01. Consideration for the Property..... 14  
Section 4.02. Approved Participation Model..... 15  
Section 4.03. Recalculation Events..... 16  
Section 4.04. Agency’s Acknowledgement Regarding Approved  
Participation Model..... 18  
Section 4.05. Calculation of Revenue From Transfers to LNR’s  
Affiliate for Approved Participation Model Calculations ..... 19  
Section 4.06. Appraisal Process..... 19

**ARTICLE 5. PRELIMINARY TASKS ..... 21**  
Section 5.01. Preliminary Tasks ..... 21  
Section 5.02. Specific Plan ..... 21  
Section 5.03. Development Agreement ..... 21  
Section 5.04. Title Policy..... 23  
Section 5.05. Public Infrastructure Improvement Agreement..... 24  
Section 5.06. McKinney Act Requirements..... 24  
Section 5.07. Purchase of Additional Property ..... 25

<b>ARTICLE 6.</b>	<b>DEVELOPMENT OF THE PROPERTY .....</b>	<b>25</b>
	Section 6.01. Scope of Development.....	25
	Section 6.02. Minimum Development Obligations.....	25
	Section 6.03. Performance Schedule.....	26
	Section 6.04. Payment of Costs .....	27
	Section 6.05. Authority and Other Governmental Permits .....	27
	Section 6.06. Right of Entry .....	27
	Section 6.07. Local, State and Federal Laws .....	28
	Section 6.08. Antidiscrimination During Construction.....	28
	Section 6.09. Project Financing. ....	28
	Section 6.10. Cooperation Regarding Development.....	29
	Section 6.11. Cooperation in Processing Entitlements .....	29
	Section 6.12. Project Meetings .....	29
	Section 6.13. Security Financing; Rights of Holders.....	29
	Section 6.14. Project Management Fee.....	31
	Section 6.15. Audits.....	31
	Section 6.16. Other Agency Obligations. ....	32
<b>ARTICLE 7.</b>	<b>USE OF THE PROPERTY.....</b>	<b>33</b>
	Section 7.01. Uses.....	33
	Section 7.02. No Conveyance to Tax Exempt Entity.....	33
	Section 7.03. Obligation to Refrain from Discrimination.....	33
	Section 7.04. Form of Nondiscrimination and Nonsegregation Clauses.....	33
	Section 7.05. Effect and Duration of Covenants.....	35
<b>ARTICLE 8.</b>	<b>CLOSINGS AND ESCROW .....</b>	<b>35</b>
	Section 8.01. Escrow Agent.....	35
	Section 8.02. LNR Deposits to Escrow.....	36
	Section 8.03. Agency Deposits to Escrow .....	36
	Section 8.04. Agency Power of Termination.....	37
	Section 8.05. Closing Costs and Prorations. ....	37
	Section 8.06. Conveyance of Title and Delivery of Possession.....	38
	Section 8.07. Recordation of Deed .....	38
	Section 8.08. Title Insurance .....	38
<b>ARTICLE 9.</b>	<b>DEFAULTS, REMEDIES AND TERMINATION.....</b>	<b>38</b>
	Section 9.01. Defaults: General Provisions .....	38
	Section 9.02. Agency Default .....	38
	Section 9.03. Cure of Default .....	39

	Section 9.04.	Remedies After Expiration of Cure Period .....	39
	Section 9.05.	Termination by LNR.....	40
	Section 9.06.	Termination by Agency .....	42
	Section 9.07.	Effect of Termination.....	44
<b>ARTICLE 10.</b>	<b>REPRESENTATIONS AND WARRANTIES .....</b>		<b>44</b>
	Section 10.01.	Representations and Warranties of Agency .....	44
	Section 10.02.	Representations and Warranties of LNR.....	45
	Section 10.03.	Representations and Warranties of Authority .....	46
<b>ARTICLE 11.</b>	<b>INDEMNITIES .....</b>		<b>48</b>
	Section 11.01.	Agency Indemnities .....	48
	Section 11.02.	Authority Indemnities .....	48
	Section 11.03.	LNR Indemnities.....	48
<b>ARTICLE 12.</b>	<b>ASSIGNMENT AND TRANSFER .....</b>		<b>49</b>
	Section 12.01.	Assignment of Interests, Rights and Obligations .....	49
	Section 12.02.	Assignment of Agreement .....	49
	Section 12.03.	Release of Memorandum .....	50
<b>ARTICLE 13.</b>	<b>GENERAL PROVISIONS.....</b>		<b>51</b>
	Section 13.01.	Incorporation of Recitals and Introductory Paragraph.....	51
	Section 13.02.	Status of the Parties.....	51
	Section 13.03.	Successors and Assigns.....	51
	Section 13.04.	Severability .....	51
	Section 13.05.	Other Necessary Acts.....	51
	Section 13.06.	Construction.....	52
	Section 13.07.	Other Miscellaneous Terms .....	52
	Section 13.08.	Notices .....	52
	Section 13.09.	Conflicts of Interest.....	54
	Section 13.10.	Nonliability of Agency Officials and Employees .....	54
	Section 13.11.	Obligations Non-Recourse.....	54
	Section 13.12.	Enforced Delay: Extension of Times of Performance.....	54
	Section 13.13.	Confidentiality .....	55
	Section 13.14.	Amendment of Redevelopment Plan .....	55
	Section 13.15.	Amendments to Agreement .....	56
	Section 13.16.	Tax Consequences .....	56
	Section 13.17.	Rights Not Granted Under Agreement.....	56
	Section 13.18.	Governing Law .....	56
	Section 13.19.	Jurisdiction and Venue.....	56

Section 13.20.	Entire Agreement.....	57
Section 13.21.	Counterparts.....	57

**EXHIBIT A — THE PROPERTY**

**EXHIBIT B — APPROVED PARTICIPATION MODEL**

**EXHIBIT C — ENTITLEMENT SCHEDULE**

**EXHIBIT D — GRANT DEED**

**EXHIBIT E — PERFORMANCE SCHEDULE**

**EXHIBIT F — SCOPE OF DEVELOPMENT**

**EXHIBIT G — PROJECT MANAGEMENT SERVICES**

**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).

**“Performance Schedule”** is defined in Section 6.03 and Exhibit E.

**“Permitted Use”** means any use of a portion of the Property which meets all of the following criteria: (i) it is not inconsistent with the General Plan, the Specific Plan, or the Redevelopment Plan; (ii) it is not inconsistent with this Agreement; and (iii) it is not inconsistent with the EDC or other government requirements applicable to the Authority’s and Agency’s rights to hold and use the Property.

**“Phase One Infrastructure”** means the first phase of Backbone Infrastructure, the details and scope of which shall be described in the Specific Plan consistent with the Scope of Development and the Approved Participation Model.

**“Phase One Infrastructure Completion Date”** means that date, described in Part 2 of Exhibit E, by which LNR shall have completed the Phase One Infrastructure.

**“Preliminary Task Period”** is defined in Section 5.01.

**“Preliminary Task Termination Notice”** is defined in Section 5.01.

**“Master Developer”** is defined in Section 6.10.

**“Power of Termination”** is defined in Section 8.04.

**“Project”** is defined in Recital C.

**“Project Costs”** means any and all of LNR’s costs incurred for or in connection with the acquisition, ownership, development, management, construction, operation, marketing and disposition of the Project, and shall include Project Costs incurred by LNR prior to the date of this Agreement and all fees paid to LNR under this Agreement. Costs of the Project paid from funds derived from public financing or grants shall not be Project Costs, and in the event proceeds of public financing or grants are used to reimburse LNR for Project Costs, such reimbursement shall be a credit against Project Costs. Project Costs are subject to change as to categories and amounts to accommodate the needs of the Project.

**“Project Management Fee”** is defined in Section 6.14.

**“Project Revenue”** means all revenues of any type or nature from (a) a sale, lease or other disposition of the Property or any portion thereof to a third party, (b) a deemed sale, lease or other disposition of any portion of the Property to a LNR Affiliate, or (c) any other event, contract, service or other transaction of any type or nature generating revenues from any portion or all of the Acquisition Property. By way of example and not limitation, Project Revenues include rents, forfeited earnest money, franchise or other fees or rebates, fees for the provision by

LNR or its Affiliates of utility and other services to the Project of any nature other than fees payable to LNR pursuant to Section 6.09 or Section 6.14, royalties or other similar payments, reimbursements, insurance proceeds that are not applied to costs, condemnation awards not applied to costs, income from granting easements or other interests in or rights relating to the Property, and interest on Project Revenues while invested in interest-bearing accounts established for the Project. Project Revenues do not include LNR Capital.

**"Property"** is defined in Recital B.

**"Proposed Title Condition"** is defined in Section 5.04(c).

**"Proposed Title Policy"** is defined in Section 5.04(c).

**"Recalculation Event"** is defined in Section 4.03(c).

**"Redevelopment Law"** is defined in Recital A.

**"Redevelopment Plan"** means the Redevelopment Plan for the March Air Force Base Redevelopment Project adopted by Authority Ordinance 96-02 on July 10, 1996.

**"Reuse Plan"** means that certain document entitled "March Air Force Base Final Reuse Plan," dated October 2, 1996.

**"Revised Acceptable Economic Parameters"** is defined in Section 4.03(c).

**"RWQCB"** means the Regional Water Quality Control Board with jurisdiction over the Property.

**"Scope of Development"** is defined in Section 6.01 and Exhibit F.

**"Specific Plan"** is defined in Section 5.02.

**"Surrendered Property"** is defined in Section 6.16(b).

**"Survey"** is defined in Section 5.04(a).

**"Term"** is defined in Section 2.01.

**"Title Objections Notice"** is defined in Section 5.04(a).

**"Uncured Title Exception"** is defined in Section 5.04(b).

**Section 1.02. Additional Defined Terms.** If any capitalized terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them in this Agreement.

## **ARTICLE 2. TERM OF DISPOSITION AND DEVELOPMENT AGREEMENT**

**Section 2.01. Term.** The term of this Agreement (the "Term") shall commence upon the Effective Date of this Agreement, and unless earlier terminated pursuant to this Agreement, shall terminate on the date that is the earlier to occur of:

- (i) The Final Conveyance Date; or
- (ii) Fifteen (15) years from the Effective Date.

**Section 2.02. Automatic Extensions.** The Term shall be extended for two (2) additional five (5) year periods upon:

- (i) Delivery of a written request for extension by LNR to the Agency (the "Extension Notice"), which Extension Notice shall be delivered no earlier than 270 days or later than 120 days prior to the expiration of the Term; and
- (ii) Completion of a review and a finding by Agency that LNR is in substantial compliance with the terms of this Agreement, which review shall be conducted expeditiously by Agency following Agency's receipt of the Extension Notice. Agency may deny, condition or shorten the time of LNR's request for an extension of the Term only if, following review, the Agency determines, and sets forth in writing the basis for such determination, that LNR is in uncured material default under this Agreement. If at the end of the Term (as such may have been previously extended), Agency has not denied the request for an extension, such extension shall be deemed to be approved. However, in the event Agency demonstrates prior to the end of the Term that it has made good faith efforts to complete the review contemplated by this Section 2.02, and, notwithstanding those efforts, the review has not been completed, Agency shall have such additional time as it may reasonably require to complete its review, and the then-existing Term shall be automatically extended for the additional time required to complete such review. If the Term of this Agreement is extended, Agency shall promptly record an instrument giving notice of such extension and setting forth the dates thereof.

**Section 2.03. Financing Approval Contingency.** In addition to LNR's other rights hereunder, LNR shall have the right to terminate this Agreement without cost, obligation or liability, if LNR does not receive financing approval for LNR's obligations under this Agreement from the Board of Directors of LNR's corporate parent, LNR Property Corporation, prior to February 15, 2002.

### **ARTICLE 3. DISPOSITION OF THE PROPERTY**

**Section 3.01. Option to Purchase.** Agency hereby grants to LNR and LNR shall have the right and option, but not the obligation, to purchase the Property in successive options from Agency (each, individually, an "Option"), upon the terms and subject to the conditions set forth in this Agreement.

**Section 3.02. Exercise of Option.** Each of the successive options herein can only be exercised by LNR's execution and delivery of a written exercise of option to Agency and to Escrow Holder (each, individually, an "Option Notice"). The exercise of each successive option is conditioned upon (a) both parties failure to terminate this Agreement pursuant to Section 5.01 prior to the expiration of the Preliminary Task Period, (b) LNR's written approval of any exception to the condition of title to the Option Parcel to be acquired, (c) the absence of a finding by Agency pursuant to Section 9.06(d) of an uncured material default of this Agreement by LNR, and (d) identification by LNR of the proposed Permitted Use on such Option Parcel, which use may be expressed generally without reference to any proposed user. Each Option Notice shall set forth the description of the applicable Option Parcel as determined in accordance with Section 3.03, below. Promptly upon delivery each Option Notice, LNR and Agency shall meet and confer to determine a mutually agreeable date of Closing, which date shall not be less than 30 days or more than 90 days following the date of delivery of the Option Notice.

**Section 3.03. Successive Option Parcels.** The Property shall be divided for purposes of conveyance from the Agency to LNR into an as yet undetermined number of parcels (each, individually, an "Option Parcel" and collectively the "Option Parcels"). The description and size of each Option Parcel shall be determined by LNR and submitted to the Agency for its review. During a period not to exceed 30 days thereafter, Agency shall have the opportunity to review and concur with the description and size of each Option Parcel as determined by LNR, which



concurrence shall not be unreasonably withheld. LNR shall also, in its sole discretion, determine the order and timing of conveyance of the Option Parcels based on LNR's reasonably foreseeable development needs, provided, however, that each Option Notice shall contain the information set forth in Section 3.02. The Agency and LNR shall open an escrow for conveyance of each successive Option Parcel as set forth in Section 8.01 below.

**Section 3.04. Form of Deed.** The Agency shall convey to LNR fee simple defeasible title to the Property in the condition provided in Section 3.05 of this Agreement by grant deed in substantially the form set forth in Exhibit D (the "Grant Deed").

**Section 3.05. Condition of Title.** The Agency shall convey to LNR fee simple defeasible title to the Property free and clear of all recorded liens, encumbrances, assessments, leases and taxes except as are consistent with this Agreement, provided, however, that the Property shall be subject to easements of record.

**Section 3.06. Time for and Place of Delivery of Deed.** Subject to any mutually agreed upon extensions of time, the Agency shall deposit the Grant Deed for the conveyance of each Option Parcel on or before the date established pursuant to Section 8.03.

**Section 3.07. Taxes and Assessments.** Ad valorem taxes and assessments, if any, on the Property, levied, assessed or imposed for any period commencing prior to conveyance of title shall be borne by the Agency. All ad valorem taxes and assessments levied or imposed on an Option Parcel for any period commencing after closing of the applicable escrow, or on this Agreement at any time, shall be paid by LNR.

**Section 3.08. Conveyance Free of Possession.** Except otherwise provided in Section 5.04, the Property shall be conveyed free of any possession or right of possession by any person except that of LNR and the easements of record.

**Section 3.09. Condition of the Property.** Subject to the performance of the United States of any environmental remediation or other obligations related to Hazardous Substances on the Property that are the responsibility of the United States pursuant to the EDC and all other applicable law, and except as may be otherwise specifically provided in this Agreement, the Property shall be conveyed from the Agency to the Developer in an "As Is" condition, without relying upon any representations or warranties, express, implied or statutory of any kind.

Without limiting the above, LNR acknowledges that neither Agency, except as expressly set forth in this Agreement, nor any other party has made any representations or warranties, express or implied, on which LNR is relying as to any matters, directly or indirectly, concerning the Property, including but not limited to, the land, the square footage of the Property, improvements and infrastructure, if any, development rights and exactions, expenses associated with the Property, taxes, assessments, bonds, permissible uses, title exceptions, water or water rights, topography, utilities, zoning of the Property, soil, subsoil, the purposes for which the Property is to be used, drainage environmental or building laws, rules or regulations, toxic waste or Hazardous Materials or any other matters affecting or relating to the Property. Prior to the Close of Escrow for each Option Parcel, LNR acknowledges that it shall have had to opportunity to (i) fully inspect such Option Parcel, and (ii) determine whether such Option Parcel is suitable for LNR's proposed use.

LNR shall have relied solely upon its own investigation concerning its intended use of the Option Parcel, the Option Parcel's fitness thereof, and the availability of such intended use under applicable statutes, ordinances, and regulations. LNR further acknowledges and agrees that Agency's cooperation with LNR in connection with LNR's due diligence review of the Option Parcel, whether by providing documents or permitting inspection of the Option Parcel, has not and shall not be construed as any warranty or representation, express or implied, of any kind with respect to the Option Parcel or, except for the Agency's own documents, with respect to the accuracy, completeness, or relevancy of any such document.

The Agency shall not be responsible for any items of site work except those which are listed in this Agreement as the Agency's responsibilities. It shall be the sole responsibility of LNR, at LNR's sole expense, to investigate and determine the soil conditions and other constraints related to the use of the Property and the improvements to be constructed by LNR. If the conditions of the Property are not in all respects entirely suitable for the use or uses to which the Property or portions thereof will be put, or other constraints are identified, LNR may determine in its sole discretion whether development of such property is financially feasible. In the event LNR determines that development is not financially feasible, it shall be under no obligation to accept conveyance of such portion of the Property.

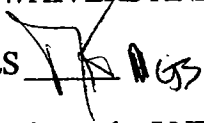
Furthermore, without limiting the generality of the foregoing, LNR hereby expressly waives, releases and relinquishes any and all claims, causes of action, rights and remedies LNR may now or hereafter have against Agency, the Authority, and their officials, officers, employees, and agents, whether known or unknown, with respect to any past, present or future presence or existence of Hazardous Substances on, under or about the Option Parcel or with respect to the Environmental Laws and any and all claims, whether known or unknown, based on nuisance, trespass or any other common law or statutory provisions. Nothing in this paragraph shall operate as a release of any rights or remedies of LNR against the Agency arising from (i) the migration or release of Hazardous Substances from/on an adjacent Option Parcel owned by the Agency, or (ii) any actions of Agency, Authority, and their officials, officers, employees and agents.

LNR HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 ("SECTION 1542"), WHICH IS SET FORTH BELOW:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

BY INITIALING BELOW, LNR HEREBY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES:

LNR'S INITIALS



The waivers and releases by LNR herein contained shall survive the Close of Escrow and the recordation of the Grant Deed and shall not be deemed merged into the Grant Deed upon its recordation.

#### ARTICLE 4. APPROVED PARTICIPATION MODEL MATTERS

**Section 4.01. Consideration for the Property.** The parties agree that, to the extent funds are available after Breakeven in any given year, and only to the extent consistent with the

Approved Participation Model and Section 4.02 below, LNR shall pay to the Agency consideration for the Property as described in this Section 4.01. Such consideration shall be in addition to the other obligations of LNR set forth in this Agreement. The parties acknowledge that there are inherent risks associated with the development of the Property, and the availability of Net Cash Flow to pay the compensation contemplated by this Section 4.01 is uncertain.

- (a) **Land Price.** LNR shall pay to Agency from Net Cash Flow \$20,000 per gross developable acre of those Option Parcels that have been conveyed to LNR, up to a Project maximum of \$20 million, on a Present Value basis utilizing a discount factor of 10% (the "Land Price").
- (b) **Additional Land Price.** LNR shall pay as additional consideration for the Property 25% of the Net Cash Flow following full payment of the Land Price for the conveyed Option Parcels (the "Additional Land Price").

**Section 4.02. Approved Participation Model.** Agency expressly determines that in consideration for the transfer of the Property to LNR in accordance with this Agreement, LNR will, among other things, incur substantial costs in developing the Property, including, but not limited to installation of infrastructure to service the Property, and Agency will benefit from LNR's phased development of the Property as a result of, among other things, the job creation and sales and other tax revenues generated by the Property and the Project. As set forth in the Recitals and based upon all available information, Agency finds and determines that the consideration for conveyance of the Property equals or exceeds the value of the Property. The Approved Participation Model has been developed on the basis of jointly developed and reviewed assumptions identified in the Approved Participation Model or stated in Section 4.03, and reflects Agency and LNR's intent that the Approved Participation Model shall include all Project Costs, whether incurred before or after the date of this Agreement. If at any time Agency and LNR shall mutually determine that the Approved Participation Model does not take into account a material Project Cost, whether by category, line item or amount, such event shall be deemed a Recalculation Event in accordance with Section 4.03. All Project Revenues shall be applied (i) first to pay Project Costs to date, (ii) then to return LNR Capital until Breakeven, (iii) to payment of Net Cash Flow in an amount of 75% to Agency and 25% to LNR until full payment of the Land Price, and (iv) finally to the payment of Net Cash Flow in an amount of

25% to Agency as the Additional Land Price and 75% to LNR, as such Net Cash Flow is calculated in accordance with the Approved Participation Model and shown on the Tiered Return Section of the Approved Participation Model. Within 120 days of the beginning of each calendar year, LNR shall provide Agency with a revised annual Approved Participation Model detailing all revenues and costs for the preceding year along with a projection for the current year for calculation of Breakeven, Land Price and Additional Land Price, and shall pay any Land Price and Additional Land Price due from the preceding year.

**Section 4.03. Recalculation Events.**

- (a) **Key Assumptions.** Agency and LNR have made certain assumptions (individually, a “Key Assumption” and collectively, the “Key Assumptions”), as set forth below:
- (i) DTSC, and to the extent required RWQCB, concurrence to the issuance of any FOST or FOSET;
  - (ii) The preservation for the benefit of Agency, and LNR as successor to Agency, and any and all Mortgagees as successor in title to LNR, of all environmental remediation and related indemnities provided by the United States pursuant to the EDC and all applicable laws;
  - (iii) Conveyance by the United States to Authority, then by Authority to Agency, and ultimately to LNR as successor to Agency, of the Property;
  - (iv) The Approved Participation Model will not require any material adjustment pursuant to Section 4.03(c);
  - (v) The preparation, submission and approval of the Specific Plan, substantially consistent with the Scope of Development, within the Preliminary Task Period;
  - (vi) The approval, execution and delivery by Authority and LNR of a Development Agreement within the Preliminary Task Period;
  - (vii) The absence of amendment to the General Plan or Redevelopment Plan prior to the execution of the Development Agreement;

